Central Law Journal.

ST. LOUIS, MO., NOVEMBER 24, 1905.

JURISDICTION OF EQUITY TO ENJOIN THE ENFORCEMENT OF JUDGMENTS.

Mr. Black in his most excellent work on Judgments, Vol. 1, sec. 356, in regard to the origin of this power says: "The power and jurisdiction of the courts of equity to enjoin a party from enforcing a judgment which he has obtained, when it would be against conscience to permit him to do so, is at the present day so firmly established, so salutary in its operation, and is so thoroughly in accord with the promptings of justice, that it is difficult to realize the stubbornness and bitter jealousy with which the beginnings of its exercise were resisted. That such was the fact, however, is fully certified by the historians. This species of jurisdiction was one of the first subjects that engaged the English Chancelors, and though violently resisted by common-law lawyers and judges, the power was largely exercised by Cardinal Wolsey in the reign of Henry VIII, and, according to Mr. Reeves with great ability and justice." A different view is given in Spence's "Equitable Jurisdiction," Vol. 1, p. 674, where he says: "The jealousy of the common law judges against this jurisdiction broke forth in the reign of Henry VIII; indeed Wolsey, when Chancelor, appears to have been rather unscrupulous in granting injunctions." However from that time down to the present day this jurisdiction has been exercised in England, and decrees of ecclesiastical courts have often been relieved from on the ground of fraud (Bissell v. Axtell, 2 Vern. 47), and so in a like manner have awards (Lonsdale v. Littlesdale, 2 Ves. Jr. 251), and verdicts. Williams v. Lee, 3 Ark. 233.

The Supreme Court of the United States in the case of Philips v. Negley, 117 U. S. 674, said: "It is equally well established by the decisions of this court that the appropriate relief against judgments at law wrongfully obtained, is by a bill in equity and the cases in which that remedy is applicable are clearly defined." "Such bills seeking relief from final judgments, solemnly rendered in the due and ordinary course of the administration of justice by courts of competent jurisdiction," says the Supreme Court of Texas in Johnson v. Templeton, 60 Tex. 239, are "always watched by courts of equity with extreme jealousy, and the grounds upon which interference will be allowed are confessedly narrow and restricted. It will not be sufficient to show that injustice has been done by the judgment sought to be enjoined. It must further distinctly and clearly appear that this result was not caused by any inattention or negligence on the part of the person aggrieved, and he must among other matters, show a clear case of diligence and of merit to obtain the interference of a court of equity in his behalf at such a stage of the case. High on Inj. (2d Ed.), secs. 112, 113; Duncan v. Lyons, 3 Johns. Ch. 356; Brown v. Hurd, 56 Ill. 317. Nor will relief be granted unless the party seeking it can show clearly to the satisfaction of the chancelor that he has a good defense to the action, and that he prevented from making it by fraud, accident or the acts of the other party wholly unmixed with any fault or negligence on his own part. He must be able to impeach the justice and equity of the verdict and judgment of which he complains, and to manifest clearly to the court that there is good ground to suppose that a different result will be attained by a new trial."

While it is almost always true that the action of a court of equity, against a judgment at law is indirect and that courts of chancery do not exercise supervisory jurisdiction over courts of law, or their proceedings, and for that reason do not attempt to reverse judgments at law, and that it is to the party himself that a court of equity directs its energies, and therefore its remedial power is exercised by putting a restraint upon his liberty of following up his judgment by usual processes and becomes effectual by perpetually enjoining the collection of a judgment, yet nevertheless there are cases which sometimes arise where the right to move for a new trial was lost, or an application was refused, in consequence of some of the circumstances which equity always regards as sufficient warrant for its interference. In such cases, the complainant being in no fault, it is generally considered to be within the power of equity to grant a new

trial. Thus says Mr. Black, vol. 1, sec. 357, Black on Judgments: "Relief of this character may be granted where the judgment is against conscience, and the applicant had no opportunity to make defense, or was prevented from defending by accident, or the fraud or the improper management of the adverse party and without fault on his own part."

Of course, the relief asked in equity against a judgment at law is given only to parties to the action or their privies as a general rule. It is purely an equitable remedy. It is not necessary for the exercise of such relief that the court be a distinctively chancery court. This power is habitually brought into play in those states where for want of separate equity courts the law courts apply equitable remedies. And even under systems where law and equity are fused, equitable jurisdiction, equitable proceedings, and equitable remedies are not abolished although metamorphosed as to their external appearance. It is however marked that in the code states where such fusion has taken place the equitable remedies are extensively lost sight of and the common law remedies hold almost full sway. Such code practice does not develop good equity lawyers as a rule, hence the possibility of such a remedy does not clearly appear generally, and is frequently neglected in cases where it might have been applied. Unavoidable accident or misfortune, preventing a party from making his defense at law, is a sufficient ground for the interference of equity in an otherwise meritorious case. Equity looks largely to the good sense of a situation and if ordinary precautions upon which parties have good reason to rely, in some way fail, a court of equity would not fail to relieve such a party having a meritorious defense from a judgment, even though the term had gone by.

NOTES OF IMPORTANT DECISIONS.

ACCIDENT INSURANCE—WHAT CONSTITUTES AN ABANDONMENT OF AN OCCUPATION.—One of the most important questions connected with the subject of accident insurance is the determination of whether the occupation of the one insured has been changed from that specified in the application. A most interesting and instructive expression of judicial opinion on this question is contained in the recent case of Aetna Life Insurance Co. v. Dunn, 138 Fed. Rep. 629. In that case it was held that where a party obtains a policy of insurance against injury by accident, specifying the occupation of the assured to be that of a druggist, deemed to be a select risk, and that of a farmer or supervising farmer only is specified as a more hazardous risk, calling for a larger premium, and thereafter the drug store of the assured was destroyed by fire, whereupon the assured moved upon a tract of land entered as a homestead, into a house built by him thereon, which he thereafter occupied with his family as his home, and superintended the construction of a barn thereon, and caused to be fenced and broken and cultivated 40 acres of the land thereof, under his supervision, for a period of six months; and was preparing for further cultivation of the land at the time of his injury, and for eight months prior to such injury had no connection with the business of a druggist, his occupation was that of a supervising farmer, and not that of a druggist, within the meaning of the policy. The court, in the course of its opinion said:

"The term 'occupation,' as employed in the policy, implies simply that which at the time of the accident giving the cause of action constituted the assured's principal business or pursuit; that which engaged his attention and time, as distinguished from that which is incidentally connected with the life of men in any or all occupations. Was the assured engaged in the business of a druggist at the time of the accident, when he had not conducted a drug store or had anything to do with one for eight months? Was he still a druggist because now and then he sought to collect some outstanding accounts connected with the former business? Was he engaged in the occupation of a druggist because he harbored in his mind a desire or purpose at some time in the future to resume such business, dependent upon several conditions, which would enable him to engage therein at some indefinite time and at some unascertained place? The very questions suggest answers in the negative. Suppose, on the other hand, that this defendant in error were seeking to recover on this policy, with the conditions reversed, on the ground that her husband, at the time of his injury, was engaged in the occupation of a supervising farmer; could any court or jury hesitate to say, on the evidence in this record, that she was entitled to recover? He had not owned or conducted a drug store for eight months, and within the six months preceding his death he had founded a home on a tract of land claimed as a homestead. There he had lived as the head of a family; there he built the barn to shelter their stock, erected or caused to be erected fences, broke or caused to be broken the wild land, and subjected it to the uses of husbandry, and was arranging for still further extension of his agricultural pursuits by sowing a crop of wheat, which, in its nature, would not be garnered before the next season. Separate

from this visible, constant occupation any information of the fact that eight months prior thereto he had been engaged at a town 20 miles distant in the business of a druggist, would any neighbor who saw him living in that home, erecting a barn and fences, with fields planted and cultivated, and making preparation for further extension of his agricultural operations, just as any other settler, arrive at any other conclusion than that his occupation, as that of any other granger in Oklahoma, was that of a farmer or supervising farmer only? His collection now and then of accounts growing out of a former drug business and settling up an insurance loss thereon, must be regarded as merely incidental to the life of any business man, in no degree altering or interrupting his visible, established agricultural pursuit."

There are a number of authorities which apparently contradict the rule laid down by the court in the principal case, but these authorities are distinguished with rare dexterity in the following language. "The authorities cited in behalf of defendant in error do but illustrate the common vice of a failure to discriminate between the facts of the case made and extraneous facts used for illustration. The case of Stone v. United States Cas. Co., 34 N. J. Law, 371, was that of a person insured as a school-teacher, and while temporarily out of employment as such, let a contract for two buildings on his premises, and while overlooking the work he fell from the building and was killed. He had not changed his occupation for another, and was only overlooking the construction of a building—a thing incidental to any man of affairs, which in no degree suspended his regular occupation, any more than if during "school days" he had gone out to look over the work being done for him. The case of Johnson v. London Guarantee & Accident Co., 115 Mich. 86, 72 N. W. Rep. 1115, 40 L. R. A. 440, 49 Am. St. Rep. 549, is of a like class. In the application the assured had represented that he was engaged in the business or occupation of secretary and treasurer of Hull Bros. Company, grocers, under the classification 'select,' and the policy contained the same language. At the time of the application, and until the accident, he resided on his farm. The policy provided that, if injured while engaged in work or duty classed as more hazardous than his stated occupation, he should be entitled to recover only such amounts as the premium paid would purchase at the rates fixed for such increased hazard. The policy was twice renewed. He had a contract with said Hull Bros. for employment, which did not expire until some time after the injury, and received a salary up to a week before the accident, but was not receiving any salary at the time, because there was no money. A part of his business was raising cattle on the farm, and he kept a bull. Seeing one day the bull break through a fence into a pasture kept for calves, he undertook to drive him out, when the bull turned upon and injured him. He engaged in no actual work of farming. In that case there was not even a request made by the defendant for the direction of a verdict for the defendant. Both parties tried the case upon the theory that it was a question for the jury. The only question was whether he was engaged in the occupation of a farmer, and nothing more. The court held that merely living upon the farm, carried on through others, did not make him a farmer, within the meaning of the term. There was not even in the case the question of his being engaged in the occupation of a supervising farmer. In Fox v. Masons' Fraternal, etc., Assn., 96 Wis. 390, 71 N. W. Rep. 363, the occupation of the assured was represented to be that of a mill owner, overseeing only. At the time of the injury he was superintending a small portable sawmill, temporarily located in the woods for the purpose of cutting logs into lumber for use in a planing mill owned by him. It was held that such occupation did not, as matter of law, make it other than that of a millowner, overseeing only, or place him in the classification including the more hazardous occupation of 'a lumberman in the woods.' After the policy was issued he notified the company that he had changed his occupation to that of a part owner in a sawmill at Big Falls, and that his duties would be generally supervising the business, which would require him to be around the mill, lumber yard, office, and store. Afterwards he notified the insurance company of another change in his occupation, to the effect that he had changed his residence to another place, where he was associated with another party, as owner, in the operation of a planing mill, dealing in lumber, sawing, etc.; that his duties would consist of supervising the yard and mill, with a prabability that he might necessarily, for an hour or two, from time to time, be required to operate some of the machinery, which was consented to by the insurer. While so engaged he went into the woods to look after the progress of their operations, and attemp.ed with an ax to cut away a tree top that interfered with getting to some logs, and, in so doing, cut his foot. The court in that case said that it did not change his occupation; that the evidence sufficiently sustained the finding that the party was a mill owner, superintending only; that a sawmill is such, whether great or small; that neither its size nor the place of its location determined its character; that a mill in a settled community obviously does not change its character because located in the timber, at a distance from town or village. The court further said that, under that policy, acts and exposures were not classified, but only occupations. It was held that a particular exposure, under such contract of insurance, though not in pursuit of it and as a part of it, did not affect the business or occupation mentioned in the certificate, and that as his occupation when injured was that of a mill owner, overseeing only, it came clearly within the terms of the written contract."

The court then proceeds to explain the correct test to be applied to all such cases, which explanation will of course be interesting to all lawyers seeking the correct rule on any state of facts. The court said:

"The correct test in these cases is not so much as to whether the assured had in fact abandoned the occupation stated in his application and policy, but whether or not at the time of his injury he was in fact engaged in another occupation, not merely incidental, but as a business, of a more hazardous classification. In Standard Life & Accident Ins. Co. v. Taylor, 12 Tex. Civ. App. 387, 34 S. W. Rep. 781, the application and the policy stated the occupation of the assured as that of a blacksmith. The evidence showed that at the date of the application, and continuously thereafter, the assured also acted as switchman and car coupler—an occupation classed as more hazardous than that of blacksmithing—and that he received his injuries while coupling cars. It was held that recovery could only be had according to the increased hazard, and that the charge given by the trial court was incorrect, 'in requiring, in order to reduce the recovery, not only that the insured should have engaged in a more hazardous occupation, but that he should have quit that of blacksmith. But regardless of this, it was a part of the regular employment of the deceased to do just such acts as that which he was doing when he was killed. When he stated that his occupation was that of blacksmith, he did not "fully describe" all of his occupations. And when he continued to couple and uncouple cars, he only continued to perform duties which his employment imposed upon him. Unquestionably, he was engaged, when killed, in an occupation classed as more hazardous than that mentioned in the policy, and, by the terms of the contract, his beneficiary was entitled only to the sum allowed for risks in that class.' So that if, at the time Dr. Dunn made his application for and took out his policy of insurance, he had been regularly engaged in supervising a farm, which occupied most of his time and his attention, and he received his injury while engaged therein, he would not have been entitled to recover the full amount of the select policy as a druggist. Loesch v. Union C. & S. Co., 176 Mo. 655, 75 S. W. Rep. 621. In National Accident Society v. Taylor, 42 Ill. App. 97, the assured was classified as a supervising farmer, with the specification that for an injury sustained while doing any act or thing pertaining to any occupation, or exposure classed as more hazardous than that, he or his beneficiary would be entitled to recover only such amount as the society pays for such increased hazard. Among the specifications more hazardous was that of pile driver. While the assured was engaged in repairing a private bridge on his farm, in driving a post in the bed of a stream, by means of an ax and sledge, he met with an accident which caused his death by drowning. The evidenced showed that the assured occasionally did odd jobs about the farm, such as salting cattle, feeding stock, mowing out fence corners, righting up gates, fences, and the like, when out of repair; and that he superintended his farm. It was contended that the supervision of a farm meant overseeing, inspecting, and directing merely, without any personal action or manual labor. The court held that: 'The supervision of a farm includes in its care and oversight the doing of such incidental things as may be required for keeping it in order, and does not mean absolute idleness, as far as physical labor is concerned.' The court further said that: 'A pile driver is a machine for driving piles by raising, by means of power applied to the machinery, a heavy weight, and dropping it upon the pile. It is manifest that one who drives a post by means of an ax or sledge is not engaged in the occupation of a pile driver. Besides, there was no change of occupation or business on account of this act of repairing the bridge. He had not gone into the bridge business.' It would follow, however, that if such a supervising farmer had entirely abandoned his farm for eight months, and for six months had engaged in the independent business of building bridges, and received an injury while engaged therein, he would not have been engaged in the occupation of a supervising farmer when he received such injury. On the evidence in this case the court should have directed the jury, as requested by defendant below, that the plaintiff was not entitled to recover the sum of $5,000, but 'only such amount as said premium (which was paid) would purchase at the rate fixed for such increased hazard,' which the plaintiff in error concedes to have been $2,500."

STATUTE OF FRAUDS—PROMISE TO PAY DEBT OF ANOTHER WHEN NOT WITHIN THE STATUTE.—A case recently decided by the Supreme Court of Arkansas, said to draw the lines very close on the statute of frauds, is that of Long v. McDaniel, 88 S. W. Rep. 964. The facts constitute the most interesting part of the case, so we give them in full:

E. A. Long was the owner of a building in Forrest City, Ark., known as the "Imperial Hotel." One of the lower rooms of the building was rented by Long to D. F. Keath to be used as a barber shop. E. P. McDaniel, a plumber, fitted up this room with bath tubs, a range, boiler and heater, drain pipes, etc. He afterwards brought his action against Long, the owner of the building, to recover $186.40, the value of his work and labor, and for material and merchandise furnished in making such improvements. The defendant denied that the plaintiff had done any work or labor or furnished any materials or merchandise at his instance or request. He further denied that he had any control over the barber shop at the time the improvement was made, or that he has any interest in the bath tub, boiler and heater, etc., for which suit is brought. On

the trial the plaintiff testified, in substance, that Keath wanted the bath tubs and other improvements put in his barber shop, that he agreed with Keath upon the price, but that before he ordered the material or did the work he went to see the defendant, Long, and asked him what he thought about it. Long replied: "You go ahead and put the stuff in, and if Mr. Keath don't pay for it I will, but don't say anything about my agreement, for I don't want him to know about that; but I want the fixtures to stay in the house." He further testified that but for this agreement on the part of Long he would not have ordered the material unless Keath had "put up the money for it." In other parts of his testimony he spoke of Long as being "security" for the debt, but said that he ordered the goods on the promise of Long to pay for them. The plaintiff was corroborated by testimony of the traveling salesman through whom the material was purchased by McDaniel. He said: "I was showing plumbing goods to Mr. Keath in the presence of Dr. Long and S. P. McDaniel, and, after explaining same to both Mr. Keath and Dr. Long, I named the price of these goods. Dr. Long turned to McDaniel, and said, 'Mack, you had better order the goods.' " On the other hand, the testimony of the defendant tends strongly to show that the material was purchased and the work done by McDaniel for Keath, and that Long took no part in the transaction, and made no promise in reference thereto. After being instructed by the court, the jury returned a verdict in favor of the plaintiff for $96.45, and defendant appealed.

The question presented by this appeal is whether the promise of the defendant upon which the plaintiff seeks to recover comes within the statute of frauds, and is invalid, because not in writing. Counsel for defendant contends that, conceding the testimony of plaintiff to be true, as the jury has found it, the substance of the whole transaction was an agreement by the defendant Long to pay the debt of the barber, Keath, and that such an agreement is within the statute, and must be in writing, in order to bind the defendant. But, while the price of the work and the material had been agreed on between McDaniel and Keath, McDaniel did not order the material or commence the work until Long promised to pay for it if Keath did not. The bath tubs, fixtures, and other improvements were to be put in a building owned by Long, and the jury were justified in finding that it was beneficial to him to have such improvement made, and that, in order to induce McDaniel to order the material and do the work, he made the promise. If the testimony of McDaniel was true, he was induced to order the material and do the work by virtue of this promise of Long that he would see that plaintiff was paid. It was then a debt of Long as well as of Keath, and the promise of Long to pay was founded on a consideration directly beneficial to him, and the statute does not apply. "When," says the Court of Appeals of New York, "the primary debt subsists and was antecedently contracted, the promise to pay it is original when it is founded on a new consideration moving to the promisor and beneficial to him, and such that the promisor thereby comes under an independent duty of payment, irrespective of the liability of the principal debtor." White v. Rintoul, 108 N. Y. 222, 15 N. E. Rep. 320. No objections are urged against the instructions, and, while the case is a close one on the facts, we think the evidence sufficient to support the judgment.

MECHANICS' LIENS—ATTORNEY'S FEES MADE PART OF LIEN.—In the case of Peckham v. Fox (Cal.), 82 Pac. Rep. 91, the act providing for mechanics' liens, among other things, includes this: "That the legislature shall provide by law for the speedy and efficient enforcement of such lien. The only objection urged by appellant's counsel is to the attorney's fee allowed by the court and made a lien upon the property in question. The points by the appellant are: First, that section 1195 of the Code of Civil Procedure, providing for such fees, is unconstitutional; second, that there is no provision in the act making the attorney's fees a lien upon the property foreclosed. But neither point is tenable. As to the first, under familiar rules of construction, there is nothing in the provisions of section 15, art. 20, of the constitution to limit the ordinary powers of the legislature, or to take from it the specific power exercised in section 1195; nor is the constitutional provision to be construed as repealing the existing provisions of the Code of Civil Procedure on the subject of "Liens of Mechanics and Others," among which is the section in question. Sedgwick on Stat. and Const. Law, p. 123 *et seq.*; Germania, etc., Assn. v. Wagner, 61 Cal. 349. On the contrary, the duty is imposed upon the legislature to "provide by law for the speedy and efficient enforcement of such liens;" and this, we think, imposes upon it, if deemed necessary to that end, the duty of providing for the cost of recording the lien and attorney's fee "as an incident to the judgment." Rapp v. Spring Valley Gold Co., 74 Cal. 532, 16 Pac. Rep. 325; McIntyre v. Trautner, 78 Cal. 449, 21 Pac. Rep. 15; Lumber Co. v. Neal, 94 Cal. 192, 29 Pac. Rep. 622; or, at least, empowers it to do so. Lumber Co. v. Welton, 115 Cal. 1, 46 Pac. Rep. 735, 1057; Sweeney v. Meyer, 124 Cal. 517, 57 Pac. Rep. 479. Nor are the provisions of section 1195 in conflict with section 1 of the fourteenth amendment to the federal constitution, or with any other provision of the federal or state constitution. The second point is in effect disposed of by the decision in Reid v. Clay, 134 Cal. 215, 216, 66 Pac. Rep. 262. That was a case of the foreclosure of a street assessment lien, under the act governing that subject, which provided that "in all cases of recovery under the provisions of this act the plaintiff shall recover the sum of fifteen dollars, in addition to the taxable cost, as attorney's fees."

St. 1889, p. 168, ch. 151, § 12. And it was held that "this must be construed as entitling him to the recovery of it as part of the recovery and judgment provided for, which is exclusively for a lien;" and it was added upon the authority of cases cited that, "otherwise, it could not be recovered." The cases are substantially similar in principle. In this respect, cases coming under the provisions of section 1195, Code Civ. Proc., and similar statutes, are to be distinguished from the case of foreclosure of mortgages, where there is no statutory provision providing for attorney's fees, "in the absence of a provision in the mortgage." Monroe v. Fohl, 72 Cal. 570, 14 Pac. Rep. 514; Hotaling v. Montieth, 128 Cal. 557, 61 Pac. Rep. 95.

THE CRIMINAL LIABILITY OF AN INCITER OR ABETTOR OF SUICIDE.

Each year sees an increase in the number of persons who, from various causes, seek relief from the trials of this life by suicide. The causes of suicide are as varied as the troubles of man, and the circumstances surrounding the death of these unfortunates, vary in almost every case. Some seek death while alone in the privacy of their rooms, while others prefer to die amid the hurry and din of the crowded city street. It is not infrequent that several persons wishing to die, mutually agree that they will kill themselves together, and in many cases one of the several obtains the means employed to produce death.

The Question.—It is in cases of this kind, where there is a mutal agreement to die together, and where for some reason one of the participants fails to accomplish his purpose, that an interesting and novel point of law arises. This point which is interesting alike to both lawyer and layman is,—what is the criminal liability of the survivor, who has been a party to the agreement, and an abettor of the suicide?

At Common Law.—At the out-set the investigator is met by a scarcity of adjudicated cases upon this subject, but there is no question as to the rule at common law. By the common law of England, suicide was considered a crime against the laws of God and man, the lands and chattels of the criminal were forfeited to the king, his body was interred in the highway with a stake driven through the head, and he was deemed a murderer of himself, and a felon *felo de se*.[1] One who persuaded another to kill himself, and was present when he did so, was held to be guilty of murder as a principal in the second degree; and where two people mutually agreed to kill themselves together, and the means employed to produce death took effect upon one only, the survivor was held to be guilty of the murder of the one who died.[2] In the early English cases the question as to whether the one who encouraged the suicide, was present when the act was done, was a very important one. If he were not present at the act which caused the death, then he would be an accessory before the fact, and at the common law escape punishment, under the rule that the aider or abettor could not be tried until the principal was first tried and convicted.[3] But it seems that the effect of this rule was, and is, largely avoided, by treating the person inciting suicide as a principal, instead of an aider and abettor.[4]

The English Cases.—The case of Rex v. Dyson,[5] was one where a man and woman by agreement went to a body of water, and the woman threw herself into the water, and was drowned. The court held that on account of the defendant Dyson being present and encouraging the woman to do the act, that he was a principal in the second degree, and guilty of murder. In another English case[6] the defendant handed the bottle containing laudanum to the deceased, asking her to drink of it, which she did causing her death. Upon a trial of the case the defendant was held to be guilty of murder. In the case of Regina v. Stornouth,[7] there was an agreement to commit suicide between one Stornouth and his wife on account of poverty. The agreement was mutual, and each purchased laudanum to carry out the agreement. The woman took the drug and died, Stornouth took a portion but did not die, and he left a note in the room, which they both had occu-

[1] Hales v. Petit, Plowd. 253-261; 1 Hale's P. C. 411-417, 2 *id.* 62; 1 Hawk. Ch. 27; 4 Bl. Com. 95, 189, 190.

[2] Bac. Max. Reg. 15; Rex v. Dyson, Rus. & Ry. 523; Regina v. Alison, 8 Car. & P. 418.

[3] Russel's Case, 1 Moody, 356; Reg. v. Leddington, 9 Car. & P. 79. These cases are cited and approved in Com. v. Mink, 123 Mass. 422, 25 Am. Rep. 109.

[4] Blackburn v. State, 23 Ohio St. 146.

[5] Russ. & R. C. C. 523.

[6] Regina v. Jessop, 10 Crim. L. Mag. 862.

[7] Regina v. Stornouth, 61 J. P. 729 (Q. B. Div.)

pied, stating that they had made such an agreement, and that the laudanum taken by the woman had produced her death, but that his had not proven fatal, so that he must resort to other means. On the discovery of the body the defendant was arrested. Upon a trial for murder the court said: "If there was an agreement, in consequence of which the woman destroyed herself, the prisoner is guilty, in law, of murder, and the fact that that might have been only a pretended agreement on his part, or that he might have had some idea of not carrying out his part of the agreement, or have changed his mind, made no difference in law." It will be noted that in all the English cases, where the defendant was held guilty of murder, that he was actually present, and did some act furthering the commission of the suicide.

The American Cases.—Most of the states of the Union have adopted the English common law, and the Acts of the British Parliament in aid thereof, as it existed up to the fourth year of the reign of James I., which was the year 1606, as far as the same was applicable to the new conditions and institutions; but the forfeiture of goods, or the dishonorable burial, which were elements of the English law pertaining to suicide, have never been adopted in this country, for the reason as one court aptly says, "that they are not applicable to the spirit of our institutions." Probably the initial case in this country, in which the element of aiding and abetting suicide enters, was the Massachusetts case of Commonwealth v. Bowen.[8] In that case, one Jewett was in prison under sentence of death, and the defendant, Bowen, having an opportunity to talk with him, advised him to commit suicide and procured and brought to him a rope for that purpose, and with which Jewett did hang himself. The indictment, drawn by Perez Morton, attorney-general, contained two counts. The first count charged that the defendant "did counsel, hire, persuade, and procure said Jewett to kill himself." The second count charged directly that Bowen murdered Jewett by hanging. At the trial before Chief Justice Parker and Justices Jackson and Putman, the attorney-general put in evidence, without objection, the verdict of the coroner's jury, finding in substance, that Jewett was found dead in prison, with a cord around his neck and around the iron grate, and concluding, in the form prescribed by the statute of 1783, that he "feloniously and as a felon of himself killed and murdered himself."[9] The Chief Justice, in charging the jury, said: "You have heard it said, gentlemen, that admitting the facts alleged in the indictment, still they do not amount to murder; for Jewett himself was the immediate cause and perpetrator of the act which terminated in his own destruction. That the act of Bowen was innocent no one will pretend, but is his offense embraced by the technical definition of a principal in murder? Self-destruction is doubtless a crime of awful turpitude; it is considered in the eye of the law of equal heniousness with the murder of one by another. In this offense, it is true the actual murderer escapes punishment; for the very commission of the crime, which the law would otherwise punish with its utmost rigor, puts the offender beyond the reach of its infliction. Now, if the murder of one's self is felony, the accessory is equally guilty as if he had aided and abetted in the murder; and I apprehend that if a man murders himself, and one stands by, aiding in and abetting the death, he is as guilty as if he himself was the murderer." In the case of Commonwealth v. Mink, decided in 1877 by the Supreme Court of Massachusetts,[10] the earlier holding in the Bowen case, placing suicide as a felony, was modified, and the court while holding that in that state suicide was not technically a felon, yet the conviction was sustained, on the ground that suicide was unlawful and criminal as *malum in se*. In that case the defendant was engaged to be married to one Charles Ricker, who expressed his intention of breaking the engagement. This announcement so exasperated the defendant that she determined to take her own life, and, seizing a revolver, made an attempt to shoot herself. Ricker, being present, seized her, and attempted to prevent her carrying out her purpose, and in the struggle the pistol was accidently discharged, fatally wounding Ricker. The defendant was indicted and convicted of manslaughter. The court held that suicide was a criminal act, and followed the principle that if one attempts to commit a criminal act, and there-

[8] Com. v. Bowen, 13 Mass. 356.

[9] Bowen's Trial, 12.

[10] Com. v. Mink, 123 Mass. 429, 25 Am. Rep. 109.

by commits homicide, although no homicide was intended, the crime will be manslaughter.

In the reports of the Supreme Court of Ohio, we find an interesting and able opinion, upon the subject of the liability of an abettor of suicide.[11] In that case, one Blackburn and a woman named Lowell, mutually agreed to commit suicide. The defendant mixed strychnine with wine, and in pursuance of the agreement the woman drank the mixture. There was some evidence tending to show that the defendant by threats, forced the woman to take the poison. The defendant was found guilty in the lower court, and appealed, contending that, as suicide was not punishable, there could be no conviction as an accessory. To this contention the court said: "Purposely and maliciously to kill a human being by administering to him or her poison, is declared by the law to be murder, irrespective of the wishes or the condition of the party to whom the poison is administered. The fact that the guilty party intends also to take his own life, and that the administration of the poison is in pursuance of an agreement that both will commit suicide, does not, in a legal sense, vary the case. If the prisoner furnished the poison to the deceased for the purpose and with the intent that she should with it commit suicide, and she accordingly took and used it for that purpose; or if he did not furnish the poison, but was present at the taking thereof by the deceased, participating, by persuasion, force, threats, or otherwise, in the taking thereof or the introduction of it into her stomach or body, then, in either of the cases supposed, he administered the poison to her, within the meaning of the statute." The judgment of conviction of the lower court was accordingly affirmed.

The latest judicial expression upon this subject is to be found in an opinion of the Supreme Court of Illinois, handed down in the year 1903.[12] The facts in that case, briefly stated, are as follows: One Burnett, who was defendant below, was a married man, about 28 years of age, living with his wife in the city of Chicago, Illinois, and was a dentist by profession. The deceased, Charlotte S. Nichol, was a married woman living with her husband and children, in the same city, and residing about three blocks from defendant's office. The two became acquainted, and the deceased formed a violent attachment for defendant. Deceased, fearing that she must leave Chicago, sought the defendant and they spent the night together at a rooming house; during the night she constantly talked about committing suicide. On the evening of the death of deceased they were again at the hotel, and deceased stated to defendant that she would not leave Chicago, but would commit suicide, stating that she had the morphine, and solicited defendant to die with her, which he refused to do. Defendant then visited a drug store and secured 25 quarter-grain tablets of morphine, which he brought to their room. They then retired, and in the morning defendant discovered that Mrs. Nichol was dead. Upon this discovery the defendant himself took the morphine remaining in the bottle, but was discovered and conducted to the hospital before the drug took effect. While at the hospital the defendant made several confessions while still under the influence of the drug, which tended to show that he had agreed with deceased to take the poison together. Burnett was tried and convicted of murder in the lower court. Upon appeal to the supreme court of that state, Judge Ricks in his opinion said: "The conviction of the defendant for murder in this case can only be sustained on the hypothesis that there was an agreement between him and Mrs. Nichol to commit suicide together, and that that agreement, in part, at least, was the inducing cause of the deceased taking the poison that produced her death. Upon the question whether, under the circumstances, suicide is a crime, we have a paucity of decisions. The general rule as stated by Wharton is: 'If two persons encourage each other to commit suicide jointly, and one succeeds and the other fails in the attempt upon himself, he is a principal in the murder of the other.' * * * There is no evidence, either by the admissions of the defendant or any witness, that the deceased took any morphine in the presence of the defendant, or that he gave her any, or bought any for her. The evidence rather tends to show that while the defendant was gone to the drug store to get the morphine that he purchased, the deceased took that which she had. * * * We are not disposed to go to the

[11] Blackburn v. State, 23 Ohio St. 146.
[12] Burnett v. State, 204 Ill. 208.

extent of holding, as was done in the Bowen Case, that suicide or self-destruction is a felony, but take the view that the latter pronouncement of the Massachusetts court in the Mink Case, and of the Ohio court in the Blackburn Case, more nearly announced the correct rule. * * * In the view that we entertain of the case at bar it is not necessary that suicide be held to be a crime. The charge against the defendant below, in both counts of the indictment, is murder. In the first he is charged with murdering Charlotte S. Nichol by administering poison to her, and in the second count with murdering her by hiring, persuading and procuring her to take poison; and we think proof of either one of these charges would warrant the conviction of murder." It might be stated further that the court gave as a reason for the reversal of the judgment of conviction, that there had been an entire failure of proof of any agreement to commit suicide together, or that deceased took the poison in the presence of defendant. The admissions of the defendant, made while he was under the influence of the drug, were held to be incompetent as evidence against him, and the court stated that the jury should have been instructed that such admissions should be received with caution.

Conclusion.—Several general rules may be deducted from the decisions which we have reviewed, as to the liability of the inciter or abettor of suicide. First. The same strict requirement as to proof of every element which goes to make up the crime, applicable to criminal law in general, applies to the proof in suicide cases. Second. It must be shown that the agreement to commit suicide together was in whole or in part the inducing cause of the deceased taking his or her life. Third. Where a person is present when the deceased takes the poison, with the intent to take his or her life, and participates by persuasion, threats, or otherwise, in the taking thereof, such person is guilty of administering the poison.[13]

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[13] As to the statutory enactments as to suicide, see Com. v. Mink, 123 Mass. 422, 25 Am. Rep. 109, where it is held that it is not necessary that the statute declare suicide a crime, that it is unlawful in itself. This rule is approved in Blackburn v. State, 23 Ohio St. 146; Burnett v. People, 204 Ill. 208. But see Grace v. State, 44 Texas Crim. Rep. 193, 69 S. W. Rep. 529, which takes a different view as to the rule. See also State v. Fitzgerald, 130 Mo. 407, 32 S. W. Rep. 1113.

MUNICIPAL CORPORATIONS — NOTICE OF INJURY AND ITS SUFFICIENCY.

FORSEYTH v. CITY OF OSWEGO.

Supreme Court of New York, July 31, 1905.

Compliance by an injured party with Laws 1895, p. 733, ch. 394, § 345, requiring all claims against a certain city for injuries caused by defective streets to be presented to the common council, and making the omission to present such a claim a bar to an action for the injury, is, in the absence of a sufficient excuse, a condition precedent to the maintenance of an action against the city for the injuries.

A notice stating that plaintiff, while riding along A street "near" B street, was thrown from his wagon by reason of the fact that defendant negligently allowed a large stone to be in the highway at that point, but failing to specify the date when the accident happened, and not referring to any house or other monument upon A street by which the specific location of the stone—which was in fact some 300 feet distant from B street—could be fixed, was not sufficiently definite to satisfy Laws 1895, p. 733, ch. 394, § 345, requiring claims against the city for injuries caused by the defective condition of the streets to be presented to the common council in writing, "describing the time, place, cause, and extent of the damage or injury."

The fact that a person injured by a defective street appeared before the claims committee of the city and was examined was not a waiver of any defects in his claim for damages, filed pursuant to Laws 1895, p. 733, ch. 394, § 345, where it was not shown when the examination took place, nor whether it was at the instance of the person injured or of the city, nor that the particulars of the accident were detailed.

HISCOCK, J.: This action was brought to recover damages claimed to have been sustained by plaintiff being thrown from a wagon while traveling upon one of defendant's streets upon the night of December 24, 1902. The alleged negligence of the defendant consisted in allowing a large stone to remain in the street, which, by coming in contact with the wagon in which plaintiff was riding, caused his fall. Various propositions as to the negligence of the defendant and the contributory negligence of the plaintiff are argued upon this appeal, but, inasmuch as we regard the notice of claim served by and in behalf of plaintiff fatally defective, necessitating a reversal of the judgment and order, we shall not consider the other questions presented. The accident happened upon what was known as "9 1-2 Street" or "Duer Street." This street ran north and south, and the block involved in this action was bounded on the north by Hamilton street and upon the south by Bonner street, and was about 530 feet long. Duer street upon the map was laid out a long distance south of Bonner street, but it does not clearly appear whether said latter portion was actually opened and used. It is claimed that there were several stones or boulders in Duer street, and the one complained of was situated about 300 feet north

of Bonner street. Plaintiff was riding with his brother, who was driving.

Section 345 of chapter 394, p. 733, Laws 1895 (being the charter of the city of Oswego), and which was in force at the time in question, provides:

"That all claims against the city for damages or injury alleged to have arisen from the defective, unsafe, dangerous or obstructed condition of any street * * * of the city or from negligence of the city authorities in respect thereto * * * shall within three months after the happening thereof, be presented to the common council by a writing signed by the claimant and properly verified, describing the time, place, cause and extent of the damage or injury. The omission to present such claim as aforesaid within said three months shall be a bar to any action or proceeding therefor against the city."

No notice of claim of any kind was filed by or in behalf of plaintiff until May 11, 1903, which was more than four months after the happening of the accident. There was then filed what is called a petition by plaintiff, addressed to the mayor and common council of the defendant, and which shows to the court the following facts:

"Your petitioner is a resident of the city of Oswego, N. Y., and while riding along east 9 1-2 street near Bonner St. in the city of Oswego, N. Y., in a wagon, and while in the exercise of due care on his part, said petitioner was thrown from said wagon forcibly and unexpectedly to the ground and suffered serious bodily injury by reason of said fall. Said fall was occasioned by the fact that the city of Oswego, its officers, agents and servants negligently and carelessly allowed a large stone or boulder to be and remain in the highway at that point and that said injury was caused wholly and entirely by said negligence and carelessness of said city of Oswego.

"By reason of said fall your petitioner was continuously confined to the house and was unable to transact any business of any kind for more than four months and said petitioner has only been able to leave his house but a few days prior to the date of this petition. By reason of said fall said plaintiff was rendered absolutely incompetent mentally to understand or know the necessity of filing a claim with the city of Oswego and this claim was filed by him at the earliest possible moment after he had become mentally and physically able to give directions for the making out of and presentation of said claim."

The balance of the notice relates to the character of plaintiff's injuries. The petition is dated May 12, 1903, and is verified before plaintiff's present attorney May 11, 1903. As indicated in his petition or notice, plaintiff seeks to excuse his omission to present the same to the proper authorities within the time prescribed by proving that he was mentally and physically incompetent to have the same prepared and served. Testimony was given by him and various witnesses in the attempt to sustain this theory by showing that he was rendered mentally incompetent, by reason of one sickness and another during the period December 24, 1902, to May 11, 1903, to supervise the matter in question. We shall assume the rule to be established that mental and physical conditions which prevent an injured party from complying with a statute requiring him to serve notice of claim will excuse such default. It is, however, to be noted that the plaintiff attempts to stretch this excuse in his case to a limit which has never before been reached in any of the authorities called to our attention. The time fixed by the statute before us is a liberal one, and without restating it here, a review of all of the evidence upon this point leads us to the conclusion that it was decidedly against the weight of evidence for the jury to find that plaintiff, for over four months, was so incapacitated from action as to prevent him from complying with said statute.

Passing by this point, however, we think that the notice, as finally served, is so defective as to be insufficient as matter of law. Compliance by plaintiff with the statute requiring service of this notice was, in the absence of some sufficient excuse, a condition precedent to the maintenance of his action. There was no evidence indicating that he was not capable of complying with the requirements of the statute as to the form of his notice upon May 11th or 12th, when it was formulated. The notice itself rebuts any idea of incapacity, and the learned trial justice expressly held that there was no claim or evidence of incompetency at that time. In addition, it is to be borne in mind, in the consideration of these points, that plaintiff at all times had available his brother, who was with him at the time of the accident, as a source of any information which might be lacking in his own memory. There is absolute failure to specify in the notice, directly or indirectly, the date when the alleged accident happened, and also a failure to specify with sufficient definiteness, as we think, the place where the accident happened. If we adopt the view most favorable to plaintiff that Duer street was not open south of Bonner street, we have his notice specifying the place of accident as "near" Bonner street, when as a matter of fact the obstruction was located 300 feet distant therefrom. If Duer street was open for use upon both sides of Bonner street, then the indefiniteness of the notice would be doubled. There is no reference to any house or other monument upon Duer street by which the authorities might fix more definitely the location of the obstruction. Such a notice was not a sufficient compliance with the requirements of the statute under a construction which, while it does not raise up technical and trifling obstacles to a claimant's success, still does insure to the authorities reasonably definite information by which to investigate and defend claims made against the municipality. Rauber v. Village of Wellsville, 83 App. Div. 581, 82 N. Y. Supp. 9; Paddock v. City of Syracuse, 61 Hun,

8, 15 N. Y. Supp. 387. No case is called to our attention which justifies the conclusion that the notice now before us was sufficient. In the case of Murphy v. Village of Seneca Falls, 57 App. Div. 438, 67 N. Y. Supp. 1013, especially relied upon by the learned trial justice, the notice, after specifying that the accident happened upon a certain street between two others, further stated that it was in front of or near the premises owned or occupied by a certain person. This latter information, of course, reduced to reasonable limits the uncertainty of the first part of the notice. In the case of Masters v. City of Troy, 50 Hun, 485, 3 N. Y. Supp. 450, also referred to, and where the notice stated that the accident occurred near the corner of certain streets, it appeared that the plaintiff actually fell 65 feet from the corner. The court held that the notice was sufficient, and without approving too strongly of this decision, it is sufficient to say that it does not cover a case where the distance of the accident from the point specified was between four and five times as great.

It urged that because the plaintiff appeared before the claims committee of the defendant, and was examined, after he filed his claim, there has been a waiver of any defects in his notice. The evidence of what took place upon the occasion referred to is very brief. It does not appear when the examination took place, or whether it was at the instance of the plaintiff or the defendant, and it does not appear that the particulars of the accident were detailed. No sufficient reason is indicated for holding defendant estopped from setting up plaintiff's failure to comply with the plain requirements of the statute. The judgment and order should be reversed upon questions of law and fact, and a new trial granted, with costs to appellant to abide event.

Judgment and order reversed upon questions of law and fact, and new trial granted, with costs to appellant to abide event. All concur.

NOTE.—*The Necessity of Notice of Claim for Injury in Actions Against Municipal Corporation.*—*In the Absence of Statute.*—It is well settled that unless the legislature interfere, the rule at common law does not require that a person injured by the negligence of a municipality, should give notice of such injury or present his claim for damages as a condition precedent to his right to bring an action for damages against the city. Atherton v. Bancroft, 114 Mich. 241; Gill v. Oakland, 124 Cal. 335. Thus it has been held that in the absence of an express statutory requirement, it is not a condition precedent to a right of action against a city, for injuries caused by a defective sidewalk that the claim should be presented to the city council. Green v. Town of Spencer, 67 Iowa, 410, 25 N. W. Rep. 681. To same effect, City of Galesburg v. Benedict, 22 Ill. App. 111.

Statutory Provisions.—Many states provide by statute that notice of injury must be given before action can be brought against a city for such injury. Such notice is absolutely necessary and a prerequisite to the filing of a suit. Reed v. Madison, 83 Wis. 171; Mitchell v. City of Worcester, 129 Mass. 525; Springer v. Detroit, 102 Mich. 300, 60 N. W. Rep. 688; Ray v. St. Paul, 44 Minn. 340; Kelly v. Minneapolis, 77 Minn. 76; Frost v. Casselton, 8 N. Dak. 534; Sproul v. Seattle, 17 Wash. 256; Lincoln v. Grant, 38 Neb. 369; Fort Worth v. Shers, 16 Tex. Civ. App. 487. In New York the statute requires notice of intention to sue to be given within six months. This requirement, however, has been construed to apply only to those cases where suit is delayed beyond the six month's period. Myer v. New York, 12 N. Y. St. Rep. 674.

Constitutionality.—Statutes requiring notice of injury to be given to municipalities before suit is instituted, are not retroactive and therefore do not apply to causes of action accruing before the passage of such statutes. Powers v. City of St. Paul, 36 Minn. 87, 30 N. W. Rep. 433; Shallow v. City of Salem, 136 Mass. 136; Kennedy v. City of Des Moines, 84 Iowa, 187, 50 N. W. Rep. 880; Bullock v. Durham, 64 Hun, 380, 19 N. Y. Supp. 635. But, see, Plum v. Fond du Lac, 51 Wis. 393; Reed v. City of Madison, 83 Wis. 171, 53 N. W. Rep. 547, 17 L. R. A. 733.

The question has sometimes been raised whether such statutes requiring notice of injury before suit can be instituted are not in conflict with both federal and state constitutions. Those who have thought wise to question the constitutionality of such statutes have argued the question in their briefs with great plausibility and earnestness, but the courts have uniformly refused to question their constitutionality. Thus, it has been held, that a provision in a city charter that the city shall not be liable for an injury sustained from a defect in a sidewalk, unless notice of the defect shall be given, does not conflict with a constitutional provision that corporations "shall be subject to be sued in all courts in like cases as natural persons." Van Vrauken v. City of Schenectady (N. Y.), 31 Hun, 516. See, also, Merz v. City of Brooklyn, 11 N. Y. Supp. 778 (affirmed 1891), 128 N. Y. 617 28 N. E. Rep. 253, where the same act is held constitutional as against other constitutional objections.

When Notice is Excused or Waived.—Where a party injured is by that act or otherwise "bereft of reason," or is so disabled or situated as to make the giving of such notice a practical impossibility, the giving of such notice will be excused. Barclay v. Boston, 167 Mass. 596; Chadbourne v. Exeter, 67 N. H. 190; Webster v. Beaver Dam, 84 Fed. Rep. 280. Of course failure of injured party to give notice will not defeat the right of an administrator to bring an action to recover damages for death from injuries resulting from the negligence of the city, where the death occurs within the time allowed by statute for the giving of the notice. McKeigue v. City of Janesville, 68 Wis. 50, 31 N. W. Rep. 298. In Connecticut the supreme court has laid down the harsh rule that "a person injured by the negligence of a city who does not give the required notice cannot maintain an action for the injury, regardless of the reasons for failure to give it." Crocker v. City of Hartford, 66 Conn. 387, 34 Atl. Rep. 98. The Supreme Court of New Hampshire declares that the enforcement of such an unbending rule "would work manifest injustice." Chadbourne v. Town of Exeter, 67 N. H. 190, 29 Atl. Rep. 408. Of course the courts must be very strict in examining the nature of the excuses offered so that the intent of the legislature in the passage of such statutes may not be defeated. So it has been held that a failure to give notice within the prescribed time is not excused by proof that the injured party was not able to leave his bed and had to be carried about without any showing that the giving of notice at any time within the prescribed period was impossible. McNulty

v. Cambridge, 130 Mass. 275. So also where the injury consisted of a broken limb and the party injured was in a hospital, and while there was of clear mind and visited by members of her family, the court held there was no evidence of such physical or mental incapacity that rendered the giving of notice impossible. Lyons v. City of Cambridge, 132 Mass. 534. To same effect: City of Hastings v. Foxworthy, 45 Neb. 676, 63 N. W. Rep. 955; May v. City of Boston, 150 Mass. 517, 23 N. E. Rep. 220. So also the fact that some of the city officers were at the place of an injury caused by a defective street immediately after the accident and knew precisely where it occurred, does not dispense with the necessity of giving the notice required by statute. Sowle v. City of Tomah, 81 Wis. 349, 51 N. W. Rep. 571.

JETSAM AND FLOTSAM.

THE RIGHT OF A LANDOWNER TO KILL GAME.

In a recent case before the Supreme Court of Arkansas it was held that the right of a landowner to kill game on his own land was a property right incident to his ownership of the soil, and that a law taking away this right was unconstitutional, within the fourteenth amendment. State v. Mallory (Ark. 1904), 83 S. W. Rep. 955.

Originally it would seem that the right to kill animals *feræ naturæ* was an unrestricted public or common right, belonging to all individuals as members of society, the game unreclaimed belonging either to no one or to the public. Bracton, Book II, ch. 1, sec. 2; Puffendorf, Book IV, ch. 6; 2 Black. Com., 13th ed. 419, note 10; Geer v. Connecticut (1895), 161 U. S. 519. In England the right was exercised by all subjects over all unenclosed lands, whether commons, or private or royal estates. 2 Black. Com., *supra;* Select Pleas of the Forest (13 Publications Selden Society) cxxiii; Placita de Quo Warranto, 610. Over enclosed lands this right could not be exercised, but in Select Pleas of the Forest, *supra*, cxxii, this restriction is said to have arisen, not by reason of a property right in the game in the enclosure inhering in land ownership, but by virtue of the landowner's right to prevent this, as any other trespass. On the public right to hunt royal authority early imposed a restriction by excluding the public from certain reserved acres. Canute, Secular Dooms, Cap. 81 (in Stubbs, Select Charters, 74). These reserved acres were later greatly extended by the establishment of forests, covering private as well as the royal estates, having special laws, courts, and administrative officers, and by granting to private individuals franchises of chases, parks and warrens, under which powers and privileges were conferred similar in those of the forest, but not possessed at common law. 4 Coke's Inst. 289; Manwood, Forest Laws; Stubbs, Select Charters, Assize of the Forest, 156, 157, and pp. 296, 347; Magna Charta, 1 Statutes at Large, 1; Charter of the Forest, 1 Statutes at Large, 11; Select Pleas of the Forest, *supra*, Introduction; 1 Statutes of the Realm, 4, 32. These franchises were not regarded as issuing out of the soil, 4 Coke's Inst. 318, but were personal grants and often extended over lands of which the grantee was not the owner. The restrictions and qualifications, with the old common law remaining, established the following rules as to wild game: The king was the owner, and though his ownership did not exclude the public from taking game, he might grant exclusive rights to it at his pleasure. Bracton, Book II, ch. 1, sec. 2; 2 Black. Com. 39, 410, 419; Manwood, Forest Law, 7; but see 11 Co. 87; and 2 Black. Com., 13th ed. 419, note 10. Privileged persons could prevent the taking of game, as a restraint on trespassers, and could acquire such rights as to living game that it became theirs when taken by a trespasser. Select Pleas of the Forest, *supra*, cxxii. Individual rights to game were acquired by and because of subjection to control or possession. 2 Black. Com. 392; Case of the Swans (1592), 7 Co. Rep. 15 b; Sutton v. Moody (1697), 1 Ld. Raym. 250; Blades v. Higgs (1865), 11 H. of L. Cases, 621; Queen v. Shickle (1868), L. C. 1 C. C. 158. And the grant of special privileges except perhaps in the case of a chase did not confer any more extensive rights in this respect. Ownership or control began with a successful pursuit, or in the case of dead game or game *impontentiæ*, by reason of the ownership on land on which it fell or was born. 2 Black. Com. 392-394, 419. And game reduced to possession by a trespasser became the property of the landowner. Blades v. Higgs, *supra;* 2 Black. Com., 13th ed. 419, note 10; 11 Co. 87. But see 2 Black. Com., 39.

Blackstone says, Vol. II, p. 39, that without a special privilege a landowner could not take wild game on his own land. Christian has pointed out that, by reason of the old common right, this is probably incorrect, and that Blackstone's idea was due to a statute which restricted to landowners a right formerly common to all. 2 Black. Com., 13th ed., 418, note (8), 419, (10); but see Manwood, Forest Law, 7. But landowners were selected in this statute because they were reliable persons, and there is no suggestion that the land itself gave them a peculiar right, other than the power to prevent trespass. In his land the landowner could exercise the public right to the exclusion of others, but he also had no right to wild game until reduced to possession. Sutton v. Moody, *supra*.

The right to take game in the private lands of another was a profit *a prendre*. Duchess of Norfolk v Wiseman, Y. B. 12 Henry VII, 25, 13 Henry VII, 13 pl. 2. But an owner could grant no interest in his land until owned by him, and these grants must be construed as a right to take from the land game which would otherwise belong to the owner by virtue of having fallen on his land. While practically the sum of these laws, and those as to qualifications, work to the protection of the land owners, they seem to establish that the right to kill game in England is a personal right; "when a person is merely the owner of land without any other privilege attached to it than that which ownership confers, he can have no property in the wild animals upon the land so long as they are in a state of nature and unreclaimed. Indeed, this notion of the existence of property in wild animals is inconsistent with the whole current of the authorities from the Year Books downward." Blades v. Higgs, *supra*, p. 638.

In general these principles were transplanted here by our ancestors and underlie the American law. Geer v. Connecticut, *supra*. Such property as there is in wild game is in the state or the public. Geer v. Connecticut, *supra;* State v. Theriault (Vt. 1898), 67 Am. St. Rep. 695. No individual has such a right to take game that it cannot be controlled by the state, 1 Columbia Law Review, 548, or completely taken away. *Ex parte* Maier (1894), 103 Cal. 476. It is said the only right of an individual to take game is by permission of the state, Magner v. People (1881), 97 Ill. 320, though no special privileges, as English franchises, may be granted here. 1 Schouler, Personal Prop. § 49. The principal case is believed to be the first which has de-

cided that the right to take game is so far a property right as to be beyond the absolute control of the state.—*Columbia Law Review.*

"I EXCEPT."

The New York state senate "did itself proud" when it passed the Cassidy Bill and thus put itself on record as desiring to abolish the useless and farcical performance of excepting every time a judge overrules or sustains an objection. While in theory "I except" is supposed to give due notice that the attorney does not acquiesce in his honor's ruling and intends to make it the basis of a possible appeal, in reality it serves no useful purpose. Nor is at all certain that the repeated iteration of the phrase in question does not create an impression in the minds of some jurors that there exists a serious disagreement between court and counsel. Furthermore, in the heat of trial there have been cases where an attorney has neglected through sheer inadvertence to repeat the magic formula and to hold that under such circumstances and where his objection has been fully and fairly stated, he is nevertheless not entitled to have the judge's opinion reviewed, is decidedly unfair. In itself the change does not amount to so very much, but then, after all, life is made up of little things.—*American Law Journal.*

BOOK REVIEWS.

LAWSON ON CONTRACTS.

The Principles of the American Law of Contracts at Law and in Equity, by John D. Lawson, LL. D., Dean of the Department of Law, etc., in the University of Missouri, is now before us. The reputation of this work has already spread far and wide because of its great value to the lawyers as well as the student. It is greater than Anson on Contracts because it comprehends all the virtues of Anson with a widened scope. Every lawyer should have it at hand. It is one of those works which yields the desired information quickly. The arrangement is most admirable and the indexing of the same order, and while there is no attempt to exhaust the authorities, there is what is better, a judicious discrimination in the use of the authorities as to discover the principles in bold relief. We have been having such a deluge of cases that it is hard to tell just where one stands upon any question. Mr. Lawson places every situation with such circumspection that a layman could understand it. Beginning with his definition of a contract: "Agreement consists in two or more persons being of the same mind and intention concerning the subject matter." Here we have a definition which comprehends "contracts at law and in equity." The question of intention is then given several heads. A lawyer having Lawson by his side could pick it up and get valuable instruction every time he had a contract to draw, and turning over the pages of this work would find it impossible not to get in every essential element, no matter what the nature of the agreement might be, or what changes might have come about, or whether it be a contract, part of which has been performed. He is brought face to face with the requirement till he passes through contracts and their natures to form. To grasp the form of a contract is easy when the nature of it is fully understood. The questions of consideration are most carefully gone into, and equitable considerations are brought out clearly. Then parties are considered in the same masterful way as well as consent and the legality of the agreement. Such is the process, till every matter arising from contractual relationship has been considered. It is a classic within a classic, for it comprehends Anson, whose wisdom and the beauty of whose style is already known to fame. The work, however, would fall short without the hand of Lawson. The JOURNAL gives this work God speed.

Printed in one volume of 714 pages, and published by F. H. Thomas Law Book Company, St. Louis, Mo.

BOOKS RECEIVED.

Compiled Statutes of the United States, Supplement 1905. Embracing the Statutes of the United States of a General and Permanent Nature Enacted since March 4, 1901, and in Force March 4, 1905. Incorporating under the headings of the Revised Statutes the Subsequent Laws, together with Explanatory and Historical Notes. Compiled by John A. Mallory, assisted by members of the publishers' editorial staff. St. Paul, Minn. West Publishing Co., 1905. Price $5.00. Review will follow.

HUMOR OF THE LAW.

Our good friend, Mr. Perry T. Allen, of Springfield, Mo., sends us the following:

In Springfield, Mo., Uncle Tom Conlon, a kind hearted, genial Irishman, was for a long time police judge. Uncle Tom had for the most of his life been an active contractor and builder, and brought with him into his official life the wit of the Irishman and the blunt manner of dispatching business acquired in long years of his former occupation. He had a very keen, natural sense of justice and was a good judge of human nature in the original package, but was not a believer in the formalities of a court. Before him, as police judge, there was one morning a dozen or more young men and women of the town arraigned on the charge of disturbing the peace of a neighborhood. As Uncle Tom walked into the office he noticed the semicircle of culprits with an expression of pity, and upon being seated, he with much dignity adjusted his glasses, and after surveying the array of defendants over the top rim, picked up the complaint with the following observation: "Sthand up." The defendants all guiltily arose, when Uncle Tom proceeded to arraign them as follows: "Yez are all charged with disturbin' the pace of old lady McLaughlin's lasht noight be makin' a loud and onusual noise, be cursin' and swarin', be threatenin', challengin' and foightin' and be raisin' the divil ginerally. What do yez say, guilty or not guilty?" The culprits all, one after another replied, "Not guilty," whereupon Uncle Tom continued without noticing the plea of not guilty or offering them any trial. "I'm sorry to see yez in this koind of a fix. I know yez parents, many of yez, and it would break their pore old hearts to see yez doin' so bad. He jist fine the whole kit of yez a dollar and the cost."

The woe-begone crowd seemed sort of dazed. No one was able to reply, when one, a young fellow who appeared to be out of his class, asked in a somewhat doubtful manner: "Say, don't a feller git to stand trial in this court?" Uncle Tom replied: "You've done sthood."

When some one asked Uncle Tom if he did not think his justice was a little summary, he replied:

"Wat's the use of takin' up the toime of the court with such foolishness? I can tell whether they're guilty or not as soon as I can see 'em come in at the dure, and if they're not guilty, what would the officers be bringin' 'em in for, anyhow?"

When Hetty Green was brought to court on complaint of not having a license for her dog Dewey, she said:

"I've got a New York license for the dog. Ain't that enough?"

"No, you must have a Jersey license."

"Must I? Well, it's mighty extravagant; but a dog's worth mor'n a lawyer, anyhow; barks louder for you, and don't cost near so much."

A witness who had given his evidence in such a way as satisfied everybody in court that he was committing perjury, being cautioned by the judge, said at last:

"My lord, you may believe me or not, but I have not stated a word that is false, for I have been wedded to truth from my infancy."

"Yes, sir," said Sir William Maule; "but the question is, how long have you been a widower!"

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ACCORD AND SATISFACTION — Consideration. — At common law the acceptance by a creditor of the debtor's unsecured notes for a less sum than the original debt does not extinguish the debt.—N. Frank & Sons v. Gump, Va., 51 S. E. Rep. 358.

2. ADVERSE POSSESSION—County School Lands.—Under the express provisions of the constitution, adverse possession or limitations is not available against the title of a county to lands granted to it for educational purposes.—San Augustine County v. Madden, Tex., 87 S. W. Rep. 1056.

3. ADVERSE POSSESSION—Parol Purchase.—Where a party goes into possession under a parol purchase, and surrenders it before any payment, his possession will not inure to his benefit as against the one from whom he purchased.—Moore v. Mobley, Ga., 51 S. E. Rep. 351.

4. ADVERSE POSSESSION—Presumption of Possession. —Where plaintiff shows legal title, defendant must rebut presumption of possession by showing adverse possession.—Love v. Turner, S. Car., 51 S. E. Rep. 101.

5. APPEAL AND ERROR—Amendment to Conform with Proof.—Where a widow filed a claim on contract against her husband's estate, it was error for the circuit court, on appeal, to permit her to amend the same to conform to the proof, so as to state a cause of action for subrogation to the rights of a mortgagee.—Charmley v. Charmley, Wis., 103 N. W. Rep. 1106.

6. APPEAL AND ERROR—Conclusiveness of Verdict.—The supreme court on appeal has no power to set aside a verdict as against the weight of the evidence, unless it clearly appears that there was no evidence to sustain the finding.—Jones v. American Warehouse Co., N. Car., 51 S. E. Rep. 106.

7. APPEAL AND ERROR—Excessive Damages.—Where, in an action for conversion, there was evidence authorizing the jury to award the damages it did, the court, on appeal, will not disturb the verdict as excessive.—Chicago Furniture Co. v. Cronk, Ind., 74 N. E. Rep. 627.

8. APPEAL AND ERROR—Review.—The supreme court will not reverse a judgment denying a new trial for error in refusing to allow stated questions asked, where trial judge was not informed what the answer would be.—Moore v. Mobley, Ga., 51 S. E. Rep. 351.

9. APPEAL AND ERROR—Review of Facts.—The chancellor's finding on a disputed question of fact will not be disturbed, where the evidence is conflicting and there is doubt as to the truth of the matter —Asher v. Kentucky Union Co., Ky., 87 S. W. Rep. 1087.

10. ATTORNEY AND CLIENT—Contract to Procure Legislative Action.—A contract by an attorney for services to be rendered in the procurement of legislative action will be enforced, unless it contemplates the use of unlawful means.—Stroemer v. Van Orsdel, Neb., 103 N. W. Rep. 1053.

11. ATTORNEY AND CLIENT—Lien on Client's Papers.—An attorney has a lien on the papers of his client in his possession until his claim for services is paid.—*In re* McGuire's Estate, 94 N. Y. Supp. 97.

12. BANKRUPTCY—Assignments.—The trustee in bankruptcy of a lessee of a hotel held bound by an assignment by the lessee of one-half of his interest in the buffet, which was valid as against such lessee —Lamb v. Hall, Cal., 81 Pac. Rep. 288.

13. BANKRUPTCY—Effect on Lien Claims.—Lien obtained by creditors' action to reach an equitable interest of a judgment debtor is not lost by a subsequent discharge in bankruptcy of the judgment debtor.—Wahlheimer v. Truslow, 94 N. Y. Supp. 137.

14. BANKRUPTCY—Petition to Revise.—A petition to revise in matter of law the proceedings of the district court in bankruptcy does not bring the prior proceeding of a referee before the circut court of appeals for review.—*In re* Pettingill & Co., U. S. C. C. of App., First Circuit, 137 Fed. Rep. 840.

15. BANKS AND BANKING—Liability of Stockholders of Insolvent Bank.—In an action against a stockholder in a reorganized bank, on its subsequent insolvency, on objection that at reorganization meeting the signature attached to the resolution was not properly authenticated was immaterial.—Hunt v. Hauser Malting Co., Minn., 103 N. W. Rep. 1032.

16. BANKS AND BANKING—Unauthorized Act of President.—One who, as president of a bank, procures a signature to a note for another bank, which his bank had no authority to do, held not personally liable, though the signature was forged.—First Nat. Bank v. Commercial Nat. Bank, Tex., 87 S. W. Rep. 1032.

17. BENEFIT SOCIETIES—Place of Contract.—Insurance issued in Illinois to a resident of New York, to take effect when insured should execute an agreement indorsed thereon to accept it, held a New York and not an Illinois, contract, where agreement was executed in New York.—Supreme Lodge K. P. v. Meyer, U. S. S. C., 25 Sup. Ct. Rep. 754.

18. BENEFIT SOCIETIES—Service of Process.—A former solicitor of a benefit company held not a managing agent, within the meaning of the Ohio statute relative to service of process on foreign corporations.—Spiker v. American Relief Society, Mich., 103 N. W. Rep. 611.

19. BENEFIT SOCIETIES—Waiver of Claim if Death Results from Smallpox.—It is competent for the insured to waive all claim under the policy in case of death resulting from smallpox, and to make such waiver binding on a beneficiary.—Bankers' Union of the World v. Mixon, Neb., 103 N. W. Rep. 1049.

20. BILLS AND NOTES—Duty of Showing Bona Fides.—In a suit on notes defended on grounds which would not be available against a *bona fide* holder, it is incumbent on the plaintiff to show that he is a *bona fide* holder.—Ray v. Baker, Ind., 74 N. E. Rep. 619.

21. BILLS AND NOTES—Release of Maker.—The fact that a payee of a note writes on the face thereof the word "Paid" does not, without delivery to the maker, discharge the note and release the maker from liability thereon.—Wittman v. Pickens, Colo., 81 Pac. Rep. 299.

22. BOUNDARIES—Ownership of Roadbed.—A conveyance of a lot bounded easterly by a certain road vests the grantee with the fee to the center of the road.—Mitchell v. Einstine, 94 N. Y. Supp. 210.

23. BREACH OF MARRIAGE PROMISE—Justifiable Refusal.—A charge that plaintiff may recover on proof of the contract of marriage and its breach is open to the criticism that it excludes the defense of a justifiable refusal.—Graves v. Rivers, Ga., 51 S. E. Rep. 318.

24. BURGLARY—What Constitutes.—Under Pen. Code 1895, art. 841, the insertion of a hand through a break in a house door with the intention of stealing articles less than $50 in value held not to constitute a burglary.—Jones v. State, Tex., 87 S. W. Rep. 1157.

25. CARRIERS—Carriage Beyond Station.—Where a passenger is carried to a place not called for by his ticket, against his will, he is entitled to recover any damages suffered thereby.—Latour v. Southern Ry., S. Car., 51 S. E. Rep. 265.

26. CARRIERS—Delivery of Cattle at Infected Yards—Courts take judicial notice that Texas or plenetic fever is infectious or contagious, and a railroad transporting cattle is chargeable with notice of infection.—Dorr Cattle Co. v. Chicago & G. W. Ry. Co., Iowa, 103 N. W. Rep. 1003.

27. CARRIERS—Duty to Keep Passenger Stations Lighted.—A carrier of passengers by rail is bound to keep its platforms reasonably lighted at night prior to and following the arrival and departure of trains.—Abbott v. Oregon R. Co., Oreg., 80 Pac. Rep. 1012.

28. CARRIERS—Rights of Excursionists.—Where excursionists from the crowded condition of train can secure no safer place than the platforms, it is not negligence to ride thereon.—Jackson v. Natchez & W. Ry. Co., La., 38 So. Rep. 701.

29. CEMETERIES—Validity of By-Laws.—A by-law by a cemetery association, forbidding the planting or cutting of trees, shrubbery, etc., without the consent of the officers of the association, held not within Gen. St., § 3938.—State v. Scoville, Conn., 61 Atl. Rep. 68.

30. CHATTEL MORTGAGES—Rights of Purchaser at Void Foreclosure Sale.—A mortgagee, purchasing cattle at a void sale on foreclosure of his chattel mortgages, held not entitled to credit for the expense of thereafter feeding the cattle, nor for the value of an animal dying after he took possession of it.—Kellogg v. Malick, Wis., 103 N. W. Rep. 1116.

31. CLERK OF COURTS—Duty to Search Records.—The clerk of the district court cannot be required to search the records to ascertain whether any liens exist against lands described in an abstract of title, and enter on the abstract a statement as to such search.—Sheibley v. Hurley, Neb., 103 N. W. Rep. 1052.

32. COMMERCE—State Regulation of Telegraph.—A telegram sent between points in the same state held subject to a state statute providing a penalty for delay, though a part of the wires over which it was sent were located in another state.—Western Union Telegraph Co. v. Hughes, Va., 51 S. E. Rep. 225.

33. CONSTITUTIONAL LAW—Act Regulating Sale of Liquors to Minors.—Liquor dealer's act held not repugnant to Const. U. S. Amend. 14, securing to all persons the equal protection of the laws.—McLaury v. Watelsky Tex., 87 S. W. Rep. 1045.

34. CONSTITUTIONAL LAW—Administration of Estate of Absentees.—Fixing period of person's absence from his last domicile which would be sufficient under Laws Pa. 1885, p. 155, to authorize administration of his property, held not so unreasonable as not to be due process of law.—Cunnius v. Reading School Dist., U. S. S. C., 25 Sup. Ct. Rep. 721.

35. CONSTITUTIONAL LAW—Cases Involving Federal Questions.—Rights asserted under Constitution of United States may be so wanting in merit, as not to afford basis for appeal to supreme court from circuit court of appeals.—O'Callaghan v. O'Brien, U. S. S. C., 25 Sup. Ct. Rep. 727.

36. CONSTITUTIONAL LAW—Enactment of By-laws Subsequent to Contract.—Ky. St. 1903, § 679, held, as applied to by-laws adopted by beneficial association subsequent to the statute, not violative of a provision of the federal constitution in relation to the impairment of the obligation of contracts.—Supreme Lodge K. P. v. Hunziker, Ky., 87 S. W. Rep. 1134.

37. CONSTITUTIONAL LAW—Ex post Facto Law.—A city ordinance, in so far as it merely provided for the taxation of omitted property, held not void as an *ex post facto* law.—Muir's Adm'rs v. City of Bardstown, Ky., 87 S. W. Rep. 1096.

38. CONSTITUTIONAL LAW—Fire Insurance Policy.—Act No. 149, p. 141, Pub. Acts 1881 (Comp. Laws 1897, §§ 5170-5179), conferring power on commission to prepare and adopt Michigan standard policy, held repugnant to Const. art. 4, § 1, providing that the legislative power is vested in senate and house of representatives.—King v. Concordia Fire Ins. Co., Mich., 103 N. W. Rep. 616.

39. CONSTITUTIONAL LAW—Licensing Itinerant Merchants.—Kirby's Dig. § 6886, licensing itinerant merchants, held in violation of the fourteenth amendment of the federal constitution, as denying citizens equal protection of the law.—*Ex parte* Deeds, Ark., 87 S. W. Rep. 1080.

40. CONSTITUTIONAL LAW—Municipal Ordinance Directed Against Chinese Persons.—Discrimination against Chinese persons in administration of municipal ordinance making it unlawful to exhibit gaming implements in a barred room or visit such room or house held not sufficiently shown to enable the Supreme Court of the United States to declare such ordinance void.—Ah Sin v. Wittman, U. S. S. C., 25 Sup. Ct. Rep. 756.

41. CONSTITUTIONAL LAW—Reservation of Power to Change Franchise Conditions.—Under Code, § 1619, reserving power to impose conditions on the enjoyment of corporate franchises, section 824 held not repugnant to constitutional inhibition against impairment of obligation of contract.—Marshalltown Light, Power & Ry. Co. v. City of Marshalltown, Iowa, 103 N. W. Rep. 1005.

42. CONSTITUTIONAL LAW—Retrospective Ordinance Affecting Omitted Property Tax.—A city ordinance providing for the taxation of omitted property, though re-

trospective, was not invalid for that reason. — Muir's Adm'rs v. City of Bardstown, Ky., 87 S. W. Rep. 1096.

43. CONSTITUTIONAL LAW—Validity of Tax on Special Franchises.—Exemption of subsurface street railway in New York from operation of special franchise tax authorized by Laws N. Y. 1899, ch. 712, held not to make statute invalid as denying owners of surface railways equal protection of the laws.—People of State of New York v. State Board of Tax Com'rs, U. S. S. C., 25 Sup. Ct. Rep. 705.

44. CONVERSION—Lapsed Devise.—Beneficiaries of devise of land directed to be sold for division of proceeds held entitled to countermand conversion and take land by way of reconversion.—Duckworth v. Jordan, N. Car., 51 S. E. Rep. 109.

45. CORPORATIONS—Basis of Assessing License Fee.—The comptroller, in appraising the stock of a foreign corporation as capital for the assessment of a license fee, may take into consideration the corporation's own estimate of the value of its good will.—Perkins v. Miller, 94 N. Y. Supp. 198.

46. CORPORATIONS—Failure and Continuance of Business by President.—Similar business, transacted by the president of a corporation, after its failure, in the same name, held the personal business of the president, and not a continuance of the business of the corporation.—Boyle v. Northwestern Nat. Bank of Superior, Wis., 103 N. W. Rep. 1123.

47. CORPORATIONS—Service on Agent. — Local correspondents of foreign corporation, furnishing them with market quotations, held agents for purpose of service of process.—Board of Trade of City of Chicago v. Hammond Elevator Co., U. S. S. C., 25 Sup. Ct. Rep. 740.

48. CRIMINAL EVIDENCE — Declarations of Conspirators.—An accomplice cannot corroborate himself by his declarations or statements, and the statement of one accomplice cannot corroborate another accomplice.—Wallace v. State, Tex., 87 S. W. Rep. 1041.

49. CRIMINAL EVIDENCE—Failure to Complete Objections.—Where counsel began to object to certain evidence, but the court told him he could bring out on cross-examination that the testimony was improper, and the objection was never completed, it was no ground for new trial.—Williams v. State, Ga., 51 S. E. Rep. 322.

50. CRIMINAL LAW—Former Acquittal.—To sustain a plea of former acquittal, it must appear that defendant was acquitted of the same offense as that for which he is being tried.—State v. Virgo, N. Dak., 103 N. W. Rep. 610.

51. CRIMINAL TRIAL — Continuance. — Defendant, in order to procure a continuance on the ground of the state's election to prosecute for an offense committed on a different date than that alleged, must show that he has a defense against the date selected. — Williams v. State, Tex., 87 S. W. Rep. 1155.

52. CRIMINAL TRIAL—Examination of Witness. — Remarks of solicitor general to a witness for accused held not cause for a new trial, though the statement was objected to at the time, and the court failed to rebuke his improper conduct.—Roberts v. State, Ga., 51 S. E. Rep. 374.

53. CRIMINAL TRIAL — Excessive Verdict. — Where a sentence for a criminal offense is excessive, it will be annulled, and the case remanded with directions that the defendant be sentenced in accordance with the law. —State v. Williams, La., 38 So. Rep. 686.

54. CRIMINAL TRIAL—Intent as an Element in Embezzlement.—The intent necessary to constitute the offense with which defendant is charged may be inferred from the doing of the wrongful act.—State v. Merkel, Mo., 87 S. W. Rep. 1186.

55. DAMAGES—Defective Highways.—On a hearing in damages after a default by defendant in an action against a town for injuries from a defective highway, the burden of proving the place not such was on defendant.—Paulsen v. Town of Wilton, Conn., 61 Atl. Rep. 61.

56. DEEDS—Construction as to Inconsistent Parts.—Where the granting clause and the *habendum* of a deed are irreconcilable, and it is not apparent from the other parts of the deed which the grantee intended should control, the granting clause will prevail. — Hall v. Wright, Ky., 87 S. W. Rep. 1129.

57. DEEDS—The Rule in Shelley's Case.—A deed from a father to his daughter and children, undertaking to place a restraint on the power of alienation by the mother, held void in Iowa, so as to leave her free to dispose of her interest in the land.—Hubbird v. Goin, U. S. C. C. of App., Seventh Circuit, 137 Fed. Rep. 822.

58. DEPOSITIONS — Perpetuation of Testimony.—The granting of an order for the perpetuation of testimony is improper, where the examination is sought solely to enable the plaintiff to frame the complaint. — *In re* Tweedie Trading Co., 94 N. Y. Supp. 167.

59 DISTRICT AND PROSECUTING ATTORNEYS—De facto Officer.—Where a United States district attorney was a *de facto* officer at the time an indictment was found, it was no objection thereto that his appointment was invalid on the ground that he was a nonresident of the district.—United States v. Mitchell, U. S. C. C., D. Oreg., 136 Fed. Rep. 896.

60. DIVORCE—Pendency of Action for Separate Maintenance.—A wife's maintenance of suit for separate maintenance held not to prevent her absence from him amounting to desertion.—Kusel v. Kusel, Cal., 81 Pac. Rep. 297.

61. EJECTMENT—Title to Maintain.—In action for possession of land, plaintiff must show title against the world, and, where he shows grant from state, defendant must show older grant.—Love v. Turner, S. Car., 51 S. E. Rep. 101.

62. ELECTIONS — Canvassing Board. — In an action against a county clerk, as member of the canvassing board, for wrongfully keeping plaintiff out of an office to which he was elected, a certain defense in mitigation of damages held not available, unless pleaded.—Steadley v. Stuckey, Mo., 87 S. W. Rep. 1014.

63. EMBEZZLEMENT—Arrangements with Prosecutor.—Where an embezzlement is completed, no subsequent arrangement between defendant and the injured party can relieve the act of its criminal character.—State v. Merkel, Mo., 87 S. W. Rep. 1186.

64. EQUITY—Unconscionable Enforcement of Debt.—That a creditor has been persistent in his efforts to collect his debt offers no just ground for denying him equitable relief in its enforcement.—Anthes v. Schroeder, Neb., 103 N. W. Rep. 1072.

65. ESTOPPEL — Subrogation. — Creditors secured by trust deed, who took from their debtor a warranty deed in payment of their debts without any knowledge of a prior conveyance of the fee, held to acquire whatever equities their debtor had in the land. — Dickson v. Sledge, Miss., 38 So. Rep. 673.

66. EXCHANGE OF PROPERTY—Evidence as to Terms of Agreement.—In an action to recover "boot money" given by plaintiff on a horse trade, evidence held not to show an agreement to trade back on plaintiff's dissatisfaction, or that the parties had traded back.—Boire v. McDowell, 93 N. Y. Supp. 1091.

67. EVIDENCE — Consideration Different From that Expressed in Writing.—Where a writing carries on its face mutual promises and conditions, proof of a consideration different from that expressed in the writing by parol evidence is inadmissible.—Wellmaker v. Wheatley, Ga., 51 S. E. Rep. 486.

68. EVIDENCE—Opinion Evidence. — Operatives who become familiar with the operations of machinery may testify as experts whether upon a given occasion the machinery was properly working. — Scarlotta v. Ash, Minn., 103 N. W. Rep. 1025.

69. EVIDENCE—Testamentary Capacity. — A witness testifying as an expert on the subject of testamentary capacity may not state the relative merits of the testimony of other expert witnesses.—Lancaster v. Lancaster's Exr., Ky., 87 S. W. Rep. 1137.

70. EVIDENCE—Value of Damaged Freight.—In an action for injuries to an automobile while in transit on defendant's train, plaintiff and the party of whom he purchased were competent to testify as to value.—Paterson v. Chicago, M. & St. P. Ry. Co., Minn., 108 N. W. Rep. 621.

71. EXECUTORS AND ADMINISTRATORS—Claim for Attendance and Services.—To entitle a claimant to enforce a claim against a decedent's estate for services, it is essential to offer evidence from which the value of the services may be found and whether they remain unpaid. —Luizzi v. Brady's Estate, Mich., 108 N. W. Rep. 574.

72. EXECUTORS AND ADMINISTRATORS — Subrogation as Applied to Wife Paying Mortgage Debt. — A wife, having paid a mortgage on the homestead of herself and husband, which he had assumed, held subrogated only to the rights of the mortgagee as against the property or its proceeds.—Charmley v. Charmley, Wis., 108 N. W. Rep. 1106.

73. FALSE IMPRISONMENT—Evidence as to Cruelty.—In an action against a Catholic eleemosynary institution for false imprisonment and cruelty, evidence of beatings of others than plaintiff by defendants held inadmissible. — Smith v. Sisters of the Good Shepherd, Ky., 87 S. W. Rep. 1083.

74. FEDERAL COURTS—Construction of State Statute.—Whether relation of physician and patient excluded the former's testimony, under Code Civ. Proc. N. Y. §§ 834, 836, involves question of state statute, on which decisions of highest state court will be accepted by the Supreme Court of the United States.—Supreme Lodge, K. P. v. Meyer, U. S. S. C., 25 Sup. Ct. Rep. 754.

75. FEDERAL COURTS—Jurisdiction.—Presence of question as to application of congressional legislation as to swamp lands held to give no jurisdiction to Supreme Court of United States to review judgment of state court in ejectment.—Leonard v. Vicksburg, S. & P. R. Co., U. S. S. C., 25 Sup. Ct. Rep. 750.

76. FIRE INSURANCE — Authority of Agent to Waive Provisions.—Limitations in insurance policy as to the authority of the agent to waive the conditions of the contract refer to waivers after the issuance of the policy. —Johnson v. Ætna Ins. Co., Ga., 51 S. E. Rep. 339.

77. FIXTURES—Landlord and Tenant.—Tenants held to have no right to remove anything except the gas fixtures, which were placed in the building during their tenancy under the plaintiff's vendor.—Wolff v. Sampson, Ga., 51 S. E. Rep. 335.

78. FRAUDS, STATUTE OF—Contract Employing Agent to Purchase Land.—A contract whereby an agent is employed to purchase real estate is not a contract for the creation of an estate or trust over land, within the statute of frauds.—Johnson v. Hayward, Neb., 108 N. W. Rep. 1058.

79. GAMING— Payment by Mistake. — Money paid by mistake held recoverable, though the dealings out of which the transaction grew were gambling contracts.—Adler v. C. J. Searles & Co., Miss., 38 So. Rep. 209.

80. GAMING—Proof of Particular Date.—In a prosecution for gaming, the state is not confined to proof of the particular date alleged in the information, but may go back to any time within the limitation period.—Williams v. State, Tex., 87 S. W. Rep. 1155.

81. GAMING—Repeal of Statute. — The repeal of the prohibitory liquor law relating to nuisances, in which gambling was put on a footing with the unlawful keeping or disposition of intoxicating liquor, carried with it that part of the law relating to gambling places.—State v. Carrick, Vt., 61 Atl. Rep. 35.

82. GUARANTY—Mortgage to Secure.—Where guaranty is secured by mortgage or foreclosure, the amount of the guaranty and the attorney's fees may be paid out of proceeds.—Ruberg v. Brown, S. Car., 51 S. E. Rep. 96.

83. GUARANTY—Principal and Agent.—G, in securing a guarantor of his account acceptable to plaintiff, held to have acted on his own behalf and not as plaintiff's agent.—Diamond Glass Co. v. Gould, N. J., 61 Atl. Rep. 12.

84. GUARDIAN AND WARD — Specific Performance of Contract made by Guardian.—Where a guardian of an insane person contracts with a third party concerning the ward's interest, to the injury of the ward, the court will not enforce it.—Wester v. Flygare, Minn., 108 N. W. Rep. 1020.

85. HIGHWAY—Care Required.—Whether a town exercised reasonable care in the maintenance and repair of a country road on which plaintiff was injured was a question for the jury.—Foley v. Ray, R. I., 61 Atl. Rep. 50.

86. HIGHWAY—Duty of Town.—The governmental duty imposed on a town of keeping the highways within its limits safe for public travel is imposed in respect to highways actually existing, though title to some of the highways is not actually in the town.—Paulsen v. Town of Wilton, Conn., 61 Atl. Rep. 61.

87. HIGHWAYS—Right of Re-Entry on Discontinuance of Road.—Only the heirs of the grantor can exercise the right of re entry given by a breach by the grantee of a condition that the land granted shall be used as a public road.—Mitchell v. Einstein, 94 N. Y. Supp. 210.

88. HOMESTEAD—Establishment.—One purchasing land with the intent to make it his home may impress it with a homestead character, though because of some intervening obstruction he does not take immediate actual possession.—Hair v. Davenport, Neb., 108 N. W. Rep. 1042.

89. HOMESTEAD—How Created and Lost.—A debtor, who has acquired a homestead, does not lose his rights, though by reason of death and removal of his family he has no one living with him.—Palmer v. Sawyer, Neb., 108 N. W. Rep. 1088.

90. HOMESTEAD—Undivided Interests in Land.—Owner of undivided half interest in 400 acres of land, whose homestead of 160 acres equals the other 240 acres in value, has no interest in 40 additional acres.—Carroll v. Jeffries, Tex., 87 S. W. Rep. 1050.

91. HOMICIDE—Self-Defense.—Defendant held not entitled to rely on self-defense, nor on the defense of his codefendants, if he or they began the difficulty, or met deceased armed, and engaged in a mutual conflict.—Wheeler v. Commonwealth, Ky., 87 S. W. Rep. 1106.

92. HUSBAND AND WIFE — Contract as to Property Rights.—A contract between a husband and wife, after severance of the marital relation and permanent separation, providing for a division of the property, where no fraud or concealment is shown, will not be set aside.—Hiett v. Hiett, Neb., 108 N. W. Rep. 1051.

93. HUSBAND AND WIFE—Torts of Wife.—The wife is jointly liable with her husband for torts committed by her, and her separate property may be subjected to a judgment rendered against her therefor.—Magerstadt v. Lambert, Tex., 87 S. W. Rep. 1068.

94. INFANTS—Investment of Minor's Funds.—It is not advisable that the tutor and the family meeting, called on petition to determine as to the sale of minors' property, should look forward to splendid opportunities for reinvesting the minors' funds.—Parker v. Ricks, La., 38 So. Rep. 687.

95. INJUNCTION — Maintenance of Railway Station. — The authority of the courts to compel a railroad company to maintain a station where not required by charter or statute does not justify the granting of a preliminary injunction restraining its discontinuance.—Jacquelin v. Erie R. Co., N. J., 61 Atl. Rep. 18.

96. JUDGMENT—Creditor's Suit to Set Aside Fraudulent Transfer.—Where, in a creditors' suit to set aside a fraudulent transfer made by a debtor, no accounting is necessary, the rendition of a money judgment in plaintiff's favor is proper.—Wahlheimer v. Truslow, 94 N. Y. Supp. 137.

97. JUDGMENT—Joint Defendants.—In an action for personal injuries against two railroads as joint defendants, plaintiff held to have limited his claim against one road to the amount of his judgment against it by taking such judgment for a separate and proportionate part of his damages.—Huntington v. Newport News & M. V. Co., Conn., 61 Atl. Rep. 59.

98. JUDGMENT—Pleadings.—Where, on the call of the appearance docket, no entry of default is made, the court may at a subsequent term permit plea to be filed before such entry has been made.—Chambless v. Livingston, Ga., 51 S. E. Rep. 314.

99. JURY—Religious Faith.—In an action by a Protestant against a Catholic eleemosynary institution for false imprisonment, plaintiff was not entitled to have the court peremptorily discharge six Catholics from the jury by reason of their faith.—Smith v. Sisters of the Good Shepherd, Ky., 87 S. W. Rep. 1083.

100. LANDLORD AND TENANT—Holding Over After Expiration of Lease.—Acceptance of rent by agent of landlord for month succeeding expiration of lease, with notice that tenants would only hold premises from month to month, held to raise implied assent by agent to tenants' proposed terms.—Abeel v. McDonnell, Tex., 87 S. W. Rep. 1066.

101. LANDLORD AND TENANT—Lease for Agricultural Purposes.—Where lands were rented for agricultural purposes, the manure at the conclusion of the lease should not be disturbed by the tenant.—Roberts v. Jones, S. Car., 51 S. E. Rep. 240.

102. LANDLORD AND TENANT—Sale of Portion of Leased Premises.—A sale of a portion of the leased premises by the lessor with the lessee's consent, but without the consent of the lessee's sureties, held to discharge the sureties.—Stern v. Sawyer, Vt., 61 Atl. Rep. 86.

103. LANDLORD AND TENANT—Tenant Holding Over.—A landlord cannot treat a tenant holding over as a trespasser, and at the same time require him to give 30 days' notice of his intent to vacate.—Rosenberg v. Sprecher, Neb., 103 N. W. Rep. 1045.

104. LIBEL AND SLANDER—Charges of Dishonesty.—Where a newspaper states that the sheriff of the county, a candidate for re-election, has obtained money for imaginary account for expenses, if false, it is libelous *per se*.—Farley v. McBride, Neb., 103 N. W. Rep. 1036.

105. LICENSES—State Statutes.—A state statute imposing an annual license fee on corporations held not a franchise or property tax, but an imposition which corporations subsequently organized contracted by their charters to pay.—*In re* Cosmopolitan Power Co., U. S. C. C. of App., Seventh Circuit, 137 Fed. Rep. 858.

106. LIFE INSURANCE—Consideration.—The placing of insurance with an agent prior to the execution by him of a promise to pay renewal commissions on premiums paid does not constitute a sufficient consideration to support such promise.—Anderson v. English, 94 N. Y. Supp. 200.

107. LIFE INSURANCE—Right to Participate in Reserve Fund.—An insured held to have no right to participate in the reserve fund of the company in which she had been insured before an assumption of liability by another company, with insured's contract.—Jenkins v. Sun Life Ins. Co. of America, Ky., 87 S. W. Rep. 1143.

108. LIMITATION OF ACTIONS—Indorser's Liability After Removal of Bar.—Sale and delivery and indorsement of writing obligatory after the statute of limitations had run against it held a new contract, removing the bar of the statute so far as the indorser's liability was concerned.—Conly v. Hampton, Tex., 87 S. W. Rep. 1171.

109. LIMITATION OF ACTIONS—Reservation of Lien.—A lien created by deed to secure the payment of a purchase money note is continued in force for more than 15 years from its maturity by the making of payments thereon, or the renewal of the note.—Hamilton's Exr. v. Wright, Ky., 87 S. W. Rep. 1093.

110. MALICIOUS PROSECUTION—Instructions.—In an action for malicious prosecution, an instruction that facts cannot be considered which existed prior to the prosecution, not communicated to the prosecutor, is erroneous.—Schroeder v. Blum, Neb., 103 N. W. Rep 1078.

111. MARSHALING ASSETS AND SECURITIES—Conveyance of Fee.—A grantee in a deed from a trustee acting under trust deeds, subsequent in time to another trust deed securing a different debt, acquires, in effect, a mere equity of redemption, and a right to a marshaling of assets, if necessary.—Dickson v. Sledge, Miss., 38 So. Rep. 673.

112. MASTER AND SERVANT—Concurrent Negligence of Vice Principal and Fellow Servant.—A master is liable for injuries to his servant caused by the concurrent negligence of a vice principal and fellow servants.—Moseley v. J. S. Schofield Sons Co., Ga., 51 S. E. Rep. 309.

113. MASTER AND SERVANT—Defective Appliances.—A slab tripper in a sawmill does not assume the risk to which he may be exposed by the use of defective dogs for holding the logs on the carriage.—Moses v. Grant Lumber Co., La., 38 So. Rep. 684.

114. MASTER AND SERVANT—Does Employee on Hand Car Assume the Risk.—An employee of a railway company, who without knowledge of the capacity of a hand car, is thrown from it by its overcrowded condition, he does not, as a matter of law, assume the risk.—Anderson v. Great Northern Ry. Co., Minn., 103 N. W. Rep. 1021.

115. MASTER AND SERVANT—Failure to Observe Rules.—Where a car repairer was killed while working on a car which he failed to protect by signals, as required by a rule of his employer, he assumed the risk precluding a recovery for his death.—Canadian Pac. Ry. Co. v. Elliott, U. S. C. C. of App., Second Circuit, 137 Fed. Rep. 904.

116. MASTER AND SERVANT—Letters as Constituting Written Contract.—Where certain letters between the parties contained conflicting phrases, it was not error to refuse to treat the same as embodying a written contract, and to instruct as to the meaning thereof.—Cohn v. Sherman Refining Co., Tex., 87 S. W. Rep. 1170.

117. MASTER AND SERVANT—Negligence.—Negligence of a railroad section foreman in failing to notify plaintiff and other employees under him of an approaching passenger train about to collide with a push car held negligence of the railroad company.—International & G. N. R. Co. v. Tisdale, Tex., 87 S. W. Rep. 1063.

118. MASTER AND SERVANT—Risk Assumed Must be Known and Apparent.—An employee assumes only the risks arising from the appliances and materials to be used by him, when such risks are known to him or are apparent.—New Omaha Thomson-Houston Electric Light Co. v. Dent, Neb., 103 N. W. Rep. 1091.

119. MASTER AND SERVANT—Risk of Injury by an Uneven Floor.—The risk of injury by an unevenly worn floor where a servant is working is assumed by the servant.—McLaughlin v. Atlantic Mills, R. I., 61 Atl. Rep. 42.

120. MORTGAGES—Deed Absolute.—Where a deed absolute in form was intended as an absolute conveyance, the fact that a contemporaneous agreement for a resale to the grantor at the same price was made did not establish that the deed was in fact a mortgage.—Hays v. Emerson, Ark., 87 S. W. Rep. 1027.

121. MORTGAGES—Vacating Foreclosure Sale.—Where a foreclosure sale is vacated, the bid of the purchaser at such sale should not be credited on the mortgage debt.—Greenwood Loan & Guarantee Assn. v. Williams, S. Car., 51 S. E. Rep. 272.

122. MUNICIPAL CORPORATIONS—Defective Streets.—Where a defect in a street has existed for about six months, the city has had a reasonable time in which to discover and remedy it.—Knight v. Kansas City, Mo., 87 S. W. Rep. 1192.

123. MUNICIPAL CORPORATIONS—Injunction to Prevent Illegal Use of City Property.—Injunction by taxpayer held to lie to prevent illegal use by city of land conveyed to it for specified purpose.—Bird v. Grout, 94 N. Y. Supp. 127.

124. MUNICIPAL CORPORATIONS—Maintaining Coal Hole in Sidewalk.—A coal hole in a sidewalk appurtenant to defendant's property having existed for more than 20 years, it would be presumed that it was constructed and maintained by permission of the proper authorities.—Hart v. McKenna, 94 N. Y. Supp. 216.

125. MUNICIPAL CORPORATIONS—Ordinance Regulating Overhanging Signs.—A municipal ordinance regulating overhanging signs held not so unreasonable or oppressive as to be void.—State v. Wightman, Conn., 61 Atl. Rep. 56.

126. MUNICIPAL CORPORATIONS — Special Assessment for Sewers.—That a village or its officers and agents violated certain statutes and incurred a liability for penalties by turning sewage into a stream held no ground for setting aside an assessment for constructing the sewers.—Cleneay v. Norwood, U. S. C. C., S. D. Ohio, 137 Fed. Rep. 962.

127. MUNICIPAL CORPORATIONS—Suit to Restrain the Widening of Ditch.—In a suit to restrain a city from widening a ditch on plaintiff's land, failure to specify the officers or agents of the city who entered on the land, etc., held cured by the answer.—City of Owensboro v. Brocking, Ky., 87 S. W. Rep. 1086.

128. MUNICIPAL CORPORATIONS—Validity of Ordinance Vacating Certain Streets.—An ordinance vacating certain streets for railroad purposes held not void as a grant or sale because it contained a provision granting to the railroad company the portion of the street vacated.—City of Columbus v. Union Pac. R. Co., U. S. C. C. of App., Eighth Circuit, 137 Fed. Rep. 869.

129. NEW TRIAL—Newly Discovered Evidence.—There is no error in denying a motion for a new trial on the ground of newly discovered evidence where the affidavit of the witness is not filed and no excuse is given for a failure so to do.—City of Dayton v. Hirth, Ky., 87 S. W. Rep. 1126.

130. NEW TRIAL—Objection to Evidence.—A party introducing hearsay evidence as *res gestæ* must prove that the declarations were so nearly connected with the transaction in point of time as to be free from any suspicion of afterthought.—Pool v. Warren County, Ga., 51 S. E. Rep. 328.

131. PATENTS—Evidence as to Patentability. — The issuance of a patent is evidence of the patentability, usefulness, and novelty of a device.—Atwood-Morrison Co. v. Sipp Electric & Machine Co., U. S. C. C., D. N. J., 136 Fed. Rep. 859.

132. PAYMENT—Compulsion.—Compulsory payment of money to induce a trustee to convey property according to trust agreement could not be avoided without restoring *status quo*.—Teeter v. Veitch, N. J., 61 Atl. Rep. 14.

133. PLEADING—Verification.—Where a bill by a stockholder against a corporation was amended so as to contain a verification by complaintant personally, it was immaterial that it was originally improperly verified by another.—Consumers' Gas Trust Co. v. Quinby, U. S. C. C. of App., Seventh Circuit, 137 Fed. Rep. 882.

134. PRINCIPAL AND AGENT—Authority of Agent.—A purchaser held required to show that the seller's agent had authority to make a guaranty which was not within his apparent authority.—Lucile Min. Co. v. Fairbanks, Morse & Co., Ky., 87 S. W. Rep. 1121.

135. PRINCIPAL AND SURETY—Government Contractors.—Where a government contractor's surety was discharged by a breach of contract by the government, a subsequent waiver of the breach by the contractor was ineffectual against the surety.—Fidelity & Deposit Co. of Maryland v. United States, U. S. C. C. of App., Second Circuit, 137 Fed. Rep. 866.

136. PUBLIC LANDS — Bona Fide Purchasers.—*Bona fide* purchasers of county school lands held to acquire a good title against the county, notwithstanding invalidity of original conveyance from the county.—San Augustine County v. Madden, Tex., 87 S. W. Rep. 1056.

137. PUBLIC LANDS — Issuance of Patent. — Where plaintiff applied to enter land under the treaty between the government and the Chippewa Indians, subsequent payment of the price and the issuance of the patent perfected title in plaintiff as of the date of the application.—Nicholson v. Congdon, Minn., 103 N. W. Rep. 1034.

138. PUBLIC LANDS — Premature Application to Purchase.—A premature application to purchase public school lands held not to give applicant a right to the land, where before their award to her, another made proper application.—Perry v. Rutherford, Tex., 87 S. W. Rep. 1054.

139. RELEASE—General and Particular Words.—General words in a release are to be limited to the particular words in the recital.—Texas & P. Ry. Co. v. Dashiell, U. S. S. C., 25 Sup. Ct. Rep. 787.

140. REMOVAL OF CAUSES — Nonresident Defendant.—A suit in a state court is not removal to the United States court on motion of a nonresident defendant on the ground of diverse citizenship, when the resident co-defendant is an indispensable party.—Paulk v. Ensign Oskamp Co., Ga., 51 S. E. Rep. 344.

141. SALES—Acceptance of Offer. — Where a written order for a threshing machine contained a condition for acceptance by the corporation, the signer of the order is not bound until such acceptance. — Robinson & Co. v. Ralph, Neb., 103 N. W. Rep. 1044.

142. SALES—Sufficiency of Answer in Action for Price. —The answer in action for price of machinery held not to sufficiently allege that parts of it were defective and that notice thereof was given the seller. — Lucile Min. Co. v. Fairbanks, Morse & Co., Ky., 87 S. W. Rep. 1121.

143. SALVAGE — Rights of Charterer of Tug. — The charterer of a tug, unless under a demise, is not entitled to an award for salvage services, to render which the tug left her charter employment at the order of her master.—The Arizonan, U. S. D. C., E. D. N. Y., 136 Fed. Rep. 1016.

144. SEARCHES AND SEIZURES—Persons Liable for Unlawful Search.—Where defendant induced an officer to arrest and search plaintiff for a larceny of which he was suspected, before any complaint or warrant had been issued, defendant was liable for the damages sustained. —Regan v. Harkey, Tex., 87 S. W. Rep. 1164.

145. SPECIFIC PERFORMANCE — Lease with Option to Purchase.—Although a lease giving a lessee an option to purchase is signed by the lessor only, the lessee, after entering into possession, may enforce the same. — White v. Weaver, N. J., 61 Atl. Rep. 25.

146. STIPULATIONS—To Abide Result in Other Case.— Where party to action voluntarily consents that his case should abide the result of another case, the judgment therein is final as to him.—Jarrett v. McLaughlin, Ga., 51 S. E. Rep. 329.

147. STREET RAILROADS — Refusal to Accept Late Transfer.—In an action for ejection of a passenger from a street car, on the ground that his transfer was too late, plaintiff held not entitled to recover exemplary damages.—Little Rock Traction & Electric Co. v. Winn, Ark., 87 S. W. Rep. 1025.

148. SUBROGATION—Laches.—Where plaintiff has been guilty of no laches since the supreme court held that he was entitled to subrogation to a certain lien, his alleged laches are no defense to a suit by him to enforce such subrogation.—Anthes v. Schroeder, Neb., 103 N. W. Rep. 1072.

149. SUBROGATION—Liens.—A third person, who pays a portion of a debt secured by a lien at the instance of the debtor, will not be subrogated in equity to such lien, to the prejudice of the original creditor with respect to the remainder of his debt.—J. P. Browder & Co. v. Hill, U. S. C. C. of App., Sixth Circuit, 136 Fed. Rep. 821.

150. TAXATION—Contract for Payment. — Contract for payment to municipality of license fee on each street car held not to exempt company from tax imposed under Laws N. Y. 1899, ch. 712, on franchise.—People of State of New York v. State Board of Tax Com'rs, U. S. S. C., 25 Sup. Ct. Rep. 718.

151. TAXATION—Interest.—Taxes do not bear interest until the bringing of an action thereon, unless otherwise provided by statute. — Henderson Bridge Co. v. Commonwealth, Ky., 87 S. W. Rep. 1088.

152. TAXATION—Limitations.—City taxes on omitted property, being "a liability imposed by statute," are

barred by limitations in five years.—Muir's Adm'rs v. City of Bardstown, Ky., 87 S. W. Rep. 1096.

158. TAXATION — Temporary Payment. — Temporary payment on account of transfer tax is deductible from the amount finally found to be due, but is not the concern of the appraiser or surrogate.—*In re* Skinner's Estate, 94 N. Y. Supp. 144.

154. TELEGRAPHS AND TELEPHONES—Agent of Sender. —In the transmission of a telegram the telegraph company is the agent of the sender, to whom the recipient must look for damages arising from any error.—Richmond Hosiery Mills v. Western Union Telegraph Co., Ga., 51 S. E. Rep. 290.

155. TENANCY IN COMMON—Adverse Possession.—Ten years' adverse possession after ouster gives tenant in common good title against his co-tenants. — Green v. Cannady, S. Car., 51 S. E. Rep. 32.

156. TRADE-MARKS AND TRADE-NAMES—Right to Use One's Own Name.—The right of a man to use his own name in connection with his business is so fundamental that an intent to entirely divest himself of it will not be presumed.—F. T. Blanchard Co. v. Simon, Va., 51 S. E. Rep. 222.

157. TRADE-MARKS AND TRADE-NAMES—Use of Common Device.—That the symbol used by complainant to identify its goods had been commonly used before its adoption by complainant on its label did not entitle defendant to use the same label on the same class of goods to mislead purchasers.—Johnson & Johnson v. Seabury & Johnson, N. J., 61 Atl. Rep. 5.

158. TRIAL—Costs in Equity Suit.—Where the verdict in an equity action is in favor of one of the parties, and adds that each party shall pay one-half of the costs, the supreme court will treat it as a recommendation to the presiding judge.—Strickland v. Hutchinson, Ga., 51 S. E. Rep. 348.

159. TRIAL—Impeachment of Verdict.—Testimony of a juror, that reference was made, during their deliberations, to statutes in the jury room, cannot be received to impeach the verdict.—Brister v. State, Miss., 38 So. Rep. 678.

160. TRIAL—Reopening Case.-If a motion to reopen a case after it has been taken under advisement is considered on appeal as a motion for new trial, it should appear by affidavits that the mover has discovered material evidence and had used every diligence.—Parker v. Ricks, La., 38 So. Rep. 687.

161. TRUSTS—Agent Purchasing Property he was Commissioned to Sell.—Where agent for purchase of real estate becomes the purchaser himself, he will be considered as holding the property in trust for his principal —Johnson v. Hayward, Neb., 103 N. W. Rep. 1058.

162. TRUSTS—Beneficial Owners.—Beneficial owners of property held entitled to sue without joining any other party to remove a trustee under a certain agreement, and to obtain a conveyance of a part of the property on which he had retained a lien.—Teeter v. Veitch, N. J., 61 Atl. Rep. 14.

163. TRUSTS—Misappropriation by Trustee.—A beneficiary of an express trust may, on the discovery of a misappropriation of the trust funds by the trustee, sue at law to recover the money misappropriated or sue in equity to establish a resulting trust.—Prewitt v. Prewitt, Mo., 87 S. W. Rep. 1000.

164. TRUSTS — Priorities of Creditors. — Creditors of trustee under deed of trust held entitled to no superior equity to other creditors of same class which would not be satisfied by their taxed costs and the allowance of a reasonable counsel fee.—Darling Bros. Co. v. Babcock, R. I., 61 Atl. Rep. 46.

165. VENDOR AND PURCHASER—Breach of Contract for Sale of Land.—The vendee in an executory contract for sale of land, which the vendor refuses to perform, may rescind the contract and recover the purchase money, or maintain an action for the breach.—Vallentyne v. Immigration Land Co., Minn., 103 N. W. Rep. 1028.

166. VENDOR AND PURCHASER—Installment Contract.—Where a contract for the sale of land provides for the delivery of a deed after a certain proportion of the price has been paid the delivery of the deed relates back to the date of the contract.—Krakow v. Wille, Wis., 103 N. W. Rep. 1121.

167. VENDOR AND PURCHASER—Recovery of Deposit Money.—In an action to recover money deposited by purchaser on contract for the sale of real estate, evidence held to entitle defendant to judgment on the merits.—Webster Realty Co. v. Thomas, 93 N. Y. Supp. 1077.

168. VENDOR AND PURCHASER—Title Bond.—Where the purchaser of land attacked the title bond for fraud or mistake, the burden of proof was on him.—Begley v. Combs, Ky., 87 S. W. Rep. 1081.

169. WAREHOUSEMEN—Sale or Bailment.—A contract, by which a pledgor obtained property pledged, construed, and held one of sale, and not of bailment, under which the pledgee took a good title.—Bush v. Export Storage Co., U. S. C. C., E. D. Tenn., 136 Fed. Rep. 918.

170. WHARVES—Right of Public Use.—A wharf in the harbor of a city, at the foot of a public street, for transportation of freight beyond line of railway company, held not a public wharf.—Louisville & N. R. Co. v. West Coast Naval Stores Co., U. S. S. C., 25 Sup. Ct. Rep. 745.

171. WILLS—Construction.—Where testator made a bequest to the children of two named sisters and a brother, only the children take, and descendants of children dying before testator take no interest therein.—Fulghum v. Strickland, Ga., 51 S. E. Rep. 294.

172. WILLS—Mental Capacity.—Where mental incapacity and undue influence are relied on, and there is substantial evidence of testator's unsoundness of mind, any evidence tending to prove undue influence is admissible.—*In re* Glass' Estate, Iowa, 103 N. W. Rep. 1013.

173. WILLS—Undue Influence.—On an issue of undue influence and testamentary capacity, evidence as to a statement of the draftsman of the will held admissible to show that he was not a mere amanuensis.—Lancaster v. Lancaster's Exr., Ky., 87 S. W. Rep. 1137.

174. WITNESSES—Cross-Examination in Bastardy Proceedings.—In a prosecution for bastardy, defendant's cross-examination with reference to particular acts of misconduct for the purpose of affecting his credibility should be confined to questions indicating a lack of veracity.—Shaller v. Bullock, Conn., 61 Atl. Rep. 65.

175. WITNESSES—Foundation for Impeachment.—One witness should not be permitted to contradict the testimony of another witness by stating that the latter agreed with him in the matter without first laying the proper foundation for such contradiction.—Lancaster v. Lancaster's Exr., Ky., 87 S. W. Rep. 1137.

176. WITNESSES—Hostility.—While the hostility of a witness to the parties may be shown, whether such hostility is justifiable is usually immaterial.—Seymour v. Bruske, Mich., 103 N. W. Rep. 613.

177. WITNESSES—Offering Discredited Witness. — Defendant could not procure original defensive testimony through a witness who had testified for the state and been impeached by defendant without offering such witness as his own.—Williams v. State, Tex., 87 S. W. Rep. 1155.

178. WITNESSES—Privileged Communications.—Where two persons employed the same attorney in the same business, communications with the attorney in relation to such business are not privileged *inter se*.—Brown v. Moosic Mountain Coal Co., Pa., 61 Atl. Rep. 76.

179. WITNESSES—Privileges of Bankrupt.—The finding of a referee that there was no foundation in fact for the claim of privilege set up by a bankrupt, on the ground that his books and papers, if produced, would tend to incriminate him, affirmed.—*In re* Edward Hess & Co., U. S. C. C., E. D. Pa., 135 Fed. Rep. 988.

180. WITNESSES—Physicians.—Plaintiff, by calling his physican to testify to his condition immediately after the accident, held to waive his privilege.—Powers v. Metropolitan St. Ry. Co., 94 N. Y. Supp. 184.